

An Investigation of Property Transfers
between 2006 and 2013:

The Expropriation of the Property
at Fekruna Bay, St Paul's Bay

Report by the
Auditor General
July 2017

This report has been prepared under sub-paragraph 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 sub-paragraph 9(b) of the First Schedule of the said Act.

A handwritten signature in black ink, consisting of a stylized 'C' followed by a series of loops and a long horizontal stroke extending to the right.

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Auditor General

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List of Abbreviations

AG	Auditor General
CIR	Commissioner of Inland Revenue
CoL	Commissioner of Land
DG	Director General
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EIA	Environmental Impact Assessment
EMD	Estate Management Department
EPD	Environment Protection Directorate
GPD	Government Property Department
IAID	Internal Audit and Investigations Department
LAB	Land Arbitration Board
MEPA	Malta Environment and Planning Authority
MFCC	Ministry for Fair Competition, Small Business and Consumers
MFEI	Ministry of Finance, the Economy and Investment
MJCL	Ministry for Justice, Culture and Local Government
MRRA	Ministry for Resources and Rural Affairs
MTCE	Ministry for Tourism, Culture and the Environment
NAO	National Audit Office
NHLP	North Harbours Local Plan
NWLP	North West Local Plan
NWSP	North West St Paul's Bay
OPM	Office of the Prime Minister
PAC	Public Accounts Committee
PEC	Property Evaluation Committee
PS	Parliamentary Secretary

Executive Summary

1. On 23 June 2015, the four Government Members of Parliament on the Public Accounts Committee (PAC) requested the Auditor General to investigate the expropriation of the site at Fekruna Bay, St Paul's Bay. The PAC specifically requested the National Audit Office (NAO) to ascertain whether the principles of good governance, value for money, transparency and accountability were respected, and that no political pressure was exerted with respect to this expropriation. Aside from the site at Fekruna Bay, reference was made to another three property transfers involving Government undertaken between 2006 and 2013. Two of the properties were separately reported on in December 2016, while the other is addressed in another report being issued contemporaneously.
2. The site at Fekruna Bay subject to this audit comprised the former Mare d'Oro Restaurant, property of Fekruna Ltd. In 1996, Government had expropriated adjacent land of 1,347 square metres, also property of Fekruna Ltd. This land, forming part of the foreshore, was required by Government to ensure public access to the Bay. Following the resolution of a court case, instituted by the Company shortly thereafter and determined on appeal in 2004, Government acquired the foreshore in 2007 against payment of €1,174,046.
3. After the conclusion of the acquisition of the foreshore, proceedings for the expropriation of the Mare d'Oro Restaurant were initiated when, in January 2010, the Director General (DG) Government Property Department (GPD) informed Fekruna Ltd that Government was considering the acquisition of this property. At the outset, the GPD indicated that Government was willing to acquire the property through the exchange of land, and that a Committee, the Property Evaluation Committee (PEC) had been set up to undertake negotiations. While the valuation submitted by Fekruna Ltd ranged between €6,750,000 and €7,500,000, the PEC established the value of the property at €5,000,000. Ministerial authorisation was granted to the PEC in October 2010 by the Minister of Finance, the Economy and Investment (Minister MFEI) and the Parliamentary Secretary Revenues and Land, wherein the Committee was to proceed with negotiations on the basis of the established value and to commence procedures for the identification of land of equivalent value that could be exchanged for this property.
4. Government-owned land at San Ġwann and Swieqi, measuring 3,012 and 2,630 square metres respectively, were identified for exchange by the GPD and valued by an architect appointed by the Department. Fekruna Ltd disagreed with the assigned values, which led the DG GPD to propose resolution through arbitration. To this end, an Arbitration Committee was established, composed of architects representing Government and the Company as members, and a chair nominated by the GPD. In November 2012, the Arbitration Committee submitted its report, valuing the San Ġwann site at €2,465,000 and the Swieqi site at €1,806,583.

5. The Minister for Fair Competition, Small Business and Consumers (Minister MFCC) approved the expropriation of the Fekruna Bay property, the exchange of the land at San Ġwann and Swieqi, and the sourcing of funds for the remaining balance of compensation due from the MFEI in December 2012. A contract of exchange was entered into by Government and Fekruna Ltd on 5 March 2013, by means of which Government acquired the property at Fekruna Bay, valued at €4,972,007, and transferred the land at San Ġwann and Swieqi, in aggregate valued at €4,271,583 to Fekruna Ltd. The difference, amounting to €700,424, in favour of Fekruna Ltd was offset against amounts due to Government by the Company in lieu of capital gains tax and duty on documents.
6. The fundamental requirement for an expropriation is that the land acquired by Government is to serve a public purpose. In the case of the expropriation of the Fekruna Bay property, the public purpose that was to be served was intrinsically tied to Government's efforts to acquire land outside development boundaries so as to be returned to its original state, to ensure better public access and preserve it for future generations. Other sites of interest to Government in this regard had been identified by the Office of the Prime Minister and the Malta Environment and Planning Authority (MEPA), although negotiations for their acquisition had stalled for various reasons beyond Government's control or due to budgetary constraints. In this Office's opinion, the expropriation of the Fekruna Bay property, although within development boundaries, served the intended public purpose of returning the site to its original state and granting the public better accessibility.
7. The NAO considers the setting up of the PEC, tasked with establishing the value of properties to be acquired by Government, procedures of valuation and negotiating with owners, as a positive development, shifting negotiations with owners of properties to be acquired from individual officials at the GPD to a committee. This ensured greater transparency and provided additional safeguards to the integrity of the negotiating process. The PEC retained adequate records of its meetings allowing the NAO to verify key developments, thereby ensuring greater accountability.
8. This Office noted that the procedures adopted by the PEC with respect to the expropriation of the Fekruna Bay property differed from the standard procedure adopted by the GPD. While somewhat anomalous, the NAO established that this was not in breach of statutory provisions, which do not stipulate procedural requirements. In effect, the PEC was constrained by the context within which it was to operate, characterised by significant budgetary limitations, which prohibited cash settlement. In this Office's understanding, resort to an amicable agreement was an inevitable course of action that conditioned the PEC to adopt an approach that was different to that ordinarily taken, for it was only through agreement being reached on the exchange of government-owned lands as compensation that the imposed budgetary constraints could be circumvented.

9. The NAO established that the Fekruna Bay property was within development boundaries but was not included within a specific zone until July 2006, when MEPA determined the site as developable in terms of a specific policy. Although the existing site footprint and building height limitations were retained, the use of the site was widened to encompass residential as well as commercial use. In the NAO's understanding, this classification resulted in an accretion of the property value. Developments subsequently noted in 2007, wherein the possible expropriation of the Fekruna Bay property was brought up by MEPA, were deemed incongruent with the classification of the property as a developable site, for the Authority had allowed for the redevelopment of the site one year prior. This incongruence was considered as a shortcoming in terms of good governance.
10. Tasked with the valuation of the Fekruna Bay property, the PEC sought three estimates, which established the value of the site at €5,000,000, €5,000,000 and €5,100,000. The NAO considered the Committee's efforts in obtaining multiple valuations as a positive measure. Notwithstanding this, the anticipated benefit of sourcing multiple valuations was somewhat mitigated by the fact that valuations already compiled were made available to the architects engaged in this respect. This Office is of the opinion that an element of objectivity could have been ensured had the GPD not provided the architects engaged with the valuations already compiled on behalf of Government.
11. Ministerial authorisation to proceed with negotiations for the acquisition of the Fekruna Bay property for €5,000,000 and commence procedures for the identification of government-owned land of equivalent value that could be exchanged was granted to the PEC in October 2010. Based on documentation reviewed, the NAO established that the PEC was not reconvened following ministerial authorisation, with the process now effectively driven by the DG GPD. The NAO considered the documentation made available with respect to the period October 2010 and January 2012, when valuations for the San Ġwann and Swieqi sites were obtained, as providing scant details of developments registered. This Office noted that no records of meetings held between the DG GPD and the Director Fekruna Ltd were retained on file, such as the communication of the €5,000,000 valuation to the Director Fekruna Ltd. Similarly, no record was retained of the process that led to the identification of government-owned lands for possible exchange and how the Director Fekruna Ltd was informed of these sites. It is in this context that the NAO considers the lack of documentation as a serious shortcoming, effectively impeding the Office from establishing key developments, detracting from the principles of good governance, accountability and transparency.
12. Similar concerns were noted by the NAO following the submission of valuations of the government-owned lands proposed for exchange. Although no records of negotiations were retained, no minutes of meetings kept and no documentation of correspondence exchanged made available, the NAO established that Fekruna Ltd was in disagreement with the valuations of the San Ġwann and Swieqi sites. This Office deemed the absence of any

record detailing developments at this stage of the process as a serious concern, bearing an adverse impact on the overall level of governance, accountability and transparency of Government negotiations.

13. In view of the disagreement between the parties, the DG GPD proposed resolution through arbitration, a process that was to be undertaken by an ad hoc committee, the Arbitration Committee. Despite reservations in this respect, the NAO acknowledges that arbitration provided a pragmatic course of action to address the disagreement on property values, particularly in view of the indicated budgetary constraints. Through this method, the GPD maintained control over the arbitration process and ensured resolution within the intended timeframe. Notwithstanding this, the NAO noted that the GPD did not have a set procedure for the appointment of such committees. This Office contends that a more formal process of setting up committees and selecting members representing Government was required. This would have ensured a more transparent and equitable process of arbitration. Other shortcomings noted by the NAO with respect to the Arbitration Committee related to unclear terms of reference, the decision to adopt the mean of the valuations of the San Ġwann site in a bid to reach agreement despite that the Chair deemed the Government valuation more realistic, and gaps in documentation.
14. While the aforementioned shortcomings relate to the manner in which the arbitration process was executed, the NAO maintains serious reservations regarding the principle to resort to arbitration in determining the value of government-owned land that was to be exchanged. Although Article 13(1) of the Land Acquisition (Public Purposes) Ordinance (Chapter 88) allows agreement to be reached between the Commissioner of Land and the owner of the expropriated property, no similar reference is made to the valuation of government-owned lands subject to exchange. The only provision regulating the exchange of government land is Article 13 of the Schedule (Article 3) of the Disposal of Government Land Act (Chapter 268), which does not address this matter. Although applicable legislation does not specify whether or not it is permissible for owners of expropriated property to be involved in establishing the value of government-owned land to be exchanged by way of compensation, the NAO maintains significant reservations in this respect. In this Office's opinion, arbitration, if any, was to be resorted to in the establishment of value of the Fekruna Bay property, as regulated by Article 13(1) of the Land Acquisition (Public Purposes) Ordinance, and not in the case of the San Ġwann and Swieqi sites. Negotiations on the value of government-owned land present an added and unwarranted risk to Government. As the value of the government-owned land to be exchanged is inevitably negotiated downwards by the owner of the expropriated land, the real disbursement incurred by Government, albeit not in cash, increases. This risk materialises in cases such as this, where Government indicated that cash settlement was not an option yet intended to proceed with the expropriation regardless.

15. Following agreement on the value of lands to be exchanged as compensation for the expropriation of the Fekruna Bay property, the DG GPD submitted correspondence to the Minister MFCC, wherein doubt was expressed as to whether it was prudent to conclude the expropriation in view of the then imminent general election. The Minister MFCC contended that the process was to be seen through, maintaining that it had been initiated several years earlier and served a clear public purpose. In its consideration of the matter, the NAO recognised the fact that there is no legal stipulation of what functions of government come to a halt, and when, once an election is announced. This Office acknowledges the validity of arguments supporting the exercise of prudence under such circumstances; however, similarly deems valid the drive to conclude a process that had been long outstanding. In view of the regulatory lacuna, the matter remains highly subjective.
16. The contract was concluded on 5 March 2013, by virtue of which the site at Fekruna Bay was transferred to Government for €4,972,007, while land at San Ġwann and Swieqi, valued at €4,271,583, was provided in exchange to Fekruna Ltd. The difference, amounting to €700,424, in favour of Fekruna Ltd, was offset against amounts due to Government by the Company in lieu of capital gains tax and duty on documents. The total tax and duty due, amounting to €721,544 exceeded the difference due to Fekruna Ltd by €21,119, resulting in an overpayment by Government in favour of Fekruna Ltd. This overpayment was in fact identified by the Internal Audit and Investigations Department (IAID) in its review of the contract. The NAO is of the opinion that Government should recoup the amount overpaid.
17. When comparisons are drawn between the valuations of the lands exchanged as established by the IAID Consultants and those cited in the contract, the variance of €1,127,424, adverse to Government, is substantial. Part of this variance can be attributed to the subjectivity inherent in the valuation of property, rendered evident by the fact that the valuations of the Fekruna Bay property and the San Ġwann site made reference to the same policies regulating development and use. Notwithstanding this, in the case of the Fekruna Bay property, where the shortfall to Government amounted to €875,007, the NAO is of the opinion that the subjectivity of the valuations of this property could have been mitigated had the GPD not provided the architects engaged with the valuations already obtained. While it may be reasoned that the variance in the value of the Swieqi site, amounting to €407,417, was partly attributable to the subjectivity of valuations, another factor accounting for the variance was the applicable development policies, a matter that is objective and verifiable. Although divergent views on whether the site at Swieqi was exclusively a fully detached zone or allowed for semi-detached villas, the Arbitration Committee ultimately considered the former. The NAO noted that the IAID Consultants valued the site as a semi-detached villa zone, allowing for the maximisation of revenue by Government. Having verified the accuracy of the understanding presented by the IAID, the NAO is of the opinion that revenue to Government could have been maximised through the application of policies that safeguarded Government's interests.

18. In seeking to determine whether value for money to Government was ascertained, the NAO considered diverse aspects of the transaction. An essential element in this respect is the public purpose that was to be served through this expropriation, that is, to return the site for the use and benefit of the public. Establishing the value of this benefit, positive in terms of use by the public, is beyond the scope of this audit; however, it is the magnitude of this benefit, as compared to the €5,000,000 outlay by Government, that would determine whether value for money was attained, or otherwise. Another integral aspect in the consideration of value for money was the values assigned to the properties exchanged. Concerns emerge when one considers the adverse overall impact on public funds of €1,127,424, equivalent to 22.5 per cent of the €5,000,000 transaction. This adverse impact may partly be attributed to the failure to apply planning policies that would have maximised revenue to Government, which bore a negative impact on the assurance of value for money. Finally, the NAO considered the negotiating constraints imposed on the GPD as limiting the extent of negotiations. Particularly relevant were the political commitment to achieve the objective of returning private land to the public, the timeframe within which this was to be attained and that compensation was to be settled through the exchange of land. The overall impact of these and other constraints cited render the ascertaining of whether value for money was secured by Government as debatable.

Chapter 1

Introduction

1.1 Request for Investigation

- 1.1.1** During the Public Accounts Committee (PAC) sitting of 22 June 2015, the Hon. Dr Owen Bonnici, Minister for Justice, Culture and Local Government (hereinafter referred to as Minister MJCL), and a member of the Committee, referred to the request made to the Auditor General (AG) to investigate the expropriation of two one-fourth undivided shares of the property at 36 Old Mint Street, Valletta made on 5 June 2015. In this context, the Minister MJCL requested the AG to undertake another investigation of properties that had been expropriated or exchanged by Government between 2006 and 2013.
- 1.1.2** Correspondence to this effect, dated 23 June 2015, was received by the AG, duly signed by the four Government Members of Parliament on the PAC, namely, the Hon. Dr Owen Bonnici, Minister MJCL, the Hon. Dr Edward Zammit Lewis, Minister for Tourism, the Hon. Chris Agius, Parliamentary Secretary for Research, Innovation, Youth and Sport, and the Hon. Dr Charles Mangion (Appendix refers). In seeking to ascertain that the principles of good governance, value for money, transparency and accountability were always respected, and whether any political pressure was exerted, the AG was to investigate expropriations and exchanges of property undertaken by the Government Property Department (GPD) between 2006 and 2013. Specifically indicated were:
- a. the site at Fekruna Bay, St Paul's Bay;
 - b. the purchase of the freehold property at 236 and 237 Republic Street and the temporary emphyteusis of 233 Republic Street, Valletta;
 - c. the property at Spinola Road, St Julians, property of Eighty Two Company Limited; and
 - d. the site of the former Löwenbräu brewery at Qormi.
- 1.1.3** The AG acknowledged this request in correspondence submitted to the Chair PAC on 11 August 2015. It was indicated that the National Audit Office (NAO) would be adopting that cited in the request as the basis for its terms of reference.
- 1.1.4** Considering the complexity of the transfer of each of the properties indicated in paragraph 1.1.2 (a) to (d), the NAO is separately reporting thereon. Two of the properties were separately reported on in December 2016, while the other is addressed in another report being issued concurrently. This report focuses on the expropriation of the site at Fekruna Bay, St Paul's Bay.

1.2 Media Allegations regarding the Expropriation of the Property at Fekruna Bay

- 1.2.1 On 9 March 2013, the press reported that the former Mare D'Oro Restaurant in Fekruna Bay, St Paul's Bay, was being demolished. According to that reported, the restaurant had closed down years earlier and was in a rundown and unsafe state. Press coverage on the matter indicated that the land formerly occupied by the restaurant had been expropriated by Government and the site was to be restored to its original state. In later reports related to the expropriated land, dated October 2013, media sources stated that the 2,750-square metre area was to be reclaimed for use by the public. Specifically indicated in this respect was that the project that was to be carried out incorporated a belvedere, a soft landscaped area, timber benches, the planting of tamarisk trees and a concrete deck.
- 1.2.2 Also cited in the press was an overview of the Malta Environment and Planning Authority's (MEPA) rulings and applications made in respect of the site. According to that reported in the press, the site at Fekruna Bay had been earmarked for the development of villas in the 1988 temporary provision scheme; however, the most ecologically sensitive area of the site was scheduled by MEPA in 1996. Subsequently, in 1998, MEPA rejected the application submitted by the owner of the property, Fekruna Ltd, for the development of two villas on the site. Another application, relating to the setting up of a diving centre, was also rejected by MEPA in 2003. Later that year, Fekruna Ltd submitted a new application for the demolition of the existing restaurant structure and the construction of residential units; however, this application was not approved by MEPA. Finally, in November 2010, MEPA issued an enforcement order on the derelict restaurant site.
- 1.2.3 Later media reports, which emerged in November 2013, indicated that Government had endorsed a land exchange deal with the owner of the site at Fekruna Bay in order to demolish the restaurant. Emphasised in press coverage on the matter was that the exchange agreement was concluded only four days prior to the 2013 general election, with Fekruna Ltd obtaining in excess of 5,600 square metres of land at Ta' Wied Għollieqa in San Ġwann and Ta' Xgħajrat in Swieqi, comprehensively valued at €4,300,000, in exchange for the site. Also noted was the fact that although the expropriation was announced on the Government Gazette on 4 March 2013, a contract providing compensation to Fekruna Ltd was signed the following day. Works on the restaurant's demolition commenced immediately afterwards.
- 1.2.4 Responding to that cited in media reports, the former Minister for Fair Competition, Small Business and Consumers (hereinafter referred to as Minister MFCC), the Hon. Dr Jason Azzopardi, stated that agreement was reached days ahead of the March 2013 election as the process to locate land of a comparable value had been complex and had taken months to conclude. The Minister MFCC argued that Government had decided to remove the dilapidated restaurant at Fekruna Bay as it was deemed a considerable eyesore. According to the Minister MFCC, the only means to do so and stop any future development was through expropriation, which could be transacted by offering financial compensation to the owner of the site or through the exchange of comparably valued land.

- 1.2.5 According to that stated in the media, the 1,443 square metres of land at Fekruna Bay were valued at €4,900,000, which valuation was based on permissible development as per the local plan endorsed by Government in 2006 and allowed for the construction of a leisure facility and residential units on site. It was further alleged that it was two 'awkward planning decisions' taken by Government in 1988 and 2006 that raised the stakes for Fekruna Ltd in its bid for compensation, effectively augmenting the value of the site that was to be expropriated. The North West Local Plan (NWLP), published in 2001, listed Fekruna Bay as a protected site and redefined the development boundary set in 1988 to exclude the bay from future developments. However, Fekruna Ltd had instituted proceedings in the Constitutional Court for compensation and MEPA had put on hold its decision to schedule the site. Furthermore, the media asserted that instead of correcting the 1988 error, which in effect classified the site as within a development zone, the 2006 NWLP earmarked the area for potential development. The revised NWLP rendered it permissible for the site to be developed as a food and drink outlet, beach amenity, a retail outlet, and residential units of up to 30 per cent of the total floor space on site, while maintaining public access to the bay.
- 1.2.6 In December 2014, the media reported that the development of 12 semi-detached villas was approved on the San Ġwann land granted as compensation for the expropriation of the Fekruna site; however, at this stage, the land had already been sold to a third party by Fekruna Ltd.
- 1.2.7 Reacting to later allegations, in March 2015, the Minister MFCC maintained that the expropriation of the site at Fekruna Bay was in line with a 2008 electoral pledge by the Nationalist Party to return a number of sites for the benefit of the general public. The Minister MFCC stated that a Property Evaluation Committee (PEC) had been appointed to negotiate the acquisition by Government of the site at Fekruna Bay. Furthermore, three architects were engaged to value the site, agreeing on a €5,000,000 valuation. According to the Minister MFCC, no politicians were involved in the negotiations between the GPD and Fekruna Ltd, which took almost three and a half years to conclude. Furthermore, the subsequent Administration had not revoked the expropriation and continued with the embellishment of the area.

Report by the Internal Audit and Investigations Department

- 1.2.8 In January 2016, excerpts of a report relating to the expropriation of the Fekruna Bay site compiled by the Internal Audit and Investigations Department (IAID) were cited in press coverage. The IAID report, dated September 2015, established that Government had lost in excess of €1,127,424 in the Fekruna Bay land exchange contract. In arriving at this conclusion, the IAID had engaged the services of an audit firm, hereinafter referred to as the IAID Consultants. According to the IAID report, Government had overvalued the site at Fekruna Bay by €875,000. In the land exchange contract, the Fekruna Bay site was valued at €4,972,007; however, the IAID Consultants valued the property at €4,097,000. Moreover, Government had undervalued one of the two portions of land granted in return for that

expropriated by €407,417. In fact, the Swieqi property, measuring 2,630 square metres, was valued at €1,806,583 by Government, while the IAID Consultants valued the site at €2,214,000. On the other hand, the land at San Ġwann, measuring 3,012 square metres, was valued at €2,465,000 by Government, whereas the IAID Consultants valued this property at €2,310,000, implying that Government had overvalued this property by €155,000. Although the Swieqi and San Ġwann sites were valued at €2,500,000 and €2,635,000, respectively, in 2012, in the contract of exchange, these were comprehensively valued at €4,271,583, that is, €863,000 less than the 2012 valuation. According to that stated by the media, the IAID recommended that the GPD revise the manner by which the Department carried out valuations and negotiations to better safeguard public finances.

1.2.9 Also noted in press coverage of the IAID report was that the disparity between the expropriated land (valued at €4,972,007) and the land transferred (valued at €4,271,583) amounted to €700,424 in favour of Fekruna Ltd. This amount was set off against amounts due to Government by the Company for capital gains tax and duty on documents arising out of this transaction. Stated was the fact that the amounts owed to Government, that is, €721,543, exceeded the disparity of €700,424 due to the Company. Therefore, according to the IAID report, an overpayment of €21,119 was made by the GPD to Fekruna Ltd. The media also reported that when this overpayment was brought to the attention of the Minister MFCC, he stated that he did not know and could not have known of this matter unless it was brought to his attention.

1.2.10 Notwithstanding the criticism levelled, the media reported that an important consideration was that the expropriated land was developable land and that Fekruna Ltd could have lawfully applied for a view-obstructing development on site. The expropriation precluded such a possibility. Further reported was that the expropriation was carried out for a public purpose, as rendered evident by Government's embellishment works on the site. Moreover, agreement between Government and Fekruna Ltd was reached after three years of negotiations that involved various ministries, the GPD and the Company.

1.2.11 The media reports outlined that an additional matter highlighted in the IAID report was that the process of the Fekruna Bay expropriation differed from that of previous expropriations reviewed by the IAID. In other expropriations, the ministry seeking to utilise private property for a public purpose would formally request the GPD to expropriate the site. Thereafter, the GPD would obtain a property valuation and would publish the expropriation notice in the Government Gazette. Subsequently, the owner of the now expropriated property would contact the GPD to provide evidence of ownership and, once satisfied with the compensation determined by the GPD, would either agree to a cash consideration, an exchange with other government-owned land, or a combination of both. In the event of disagreement over the amount of compensation payable by government, the matter would be referred to the Land Arbitration Board (LAB). According to the IAID report, in the case of the Fekruna Bay property, the Director General (DG) GPD had notified the property owner that Government was considering expropriating the property and that the Department was

seeking an amicable agreement. Specifically indicated in this respect was that Government preferred to effect compensation due through an exchange of properties and that a committee had been established to oversee matters.

1.2.12 In addition, according to the media, the IAID had concluded that Fekruna Ltd was requested to value the Company's property and the government-owned lands subject to possible exchange. Initially, the Company valued the Fekruna Bay property at €6,750,000. On the other hand, a valuation drawn up by a GPD architect on 18 June 2010 set the value of the property subject to expropriation at €4,900,000. On 10 July 2010, another GPD architect valued this property at €5,000,000, while a third valuation by another architect, dated 27 July 2010, estimated the value of the property at €5,100,000. In view of these valuations, the GPD valued the Fekruna Bay property at €5,000,000.

1.2.13 Cited in media reports were the views expressed by the former Minister for Finance, the Economy and Investment (hereinafter referred to as the Minister MFEI) in relation to enquiries made by the IAID. The Minister MFEI made reference to the Nationalist Party electoral programme, wherein it was pledged that a fund would be set up to reacquire land in environmentally sensitive areas and return them to their original state in the public interest. As the fund would generate pressure on public coffers, Government resorted to the transfer of public land in exchange in order to limit the adverse impact on public finances. In view of Government's preference to exchange, this necessitated amicable discussions with the owners of land that was to be expropriated, particularly since Government was averse to the risk of owners resorting to the LAB, which could result in substantially higher monetary compensation. In this case, the Minister MFEI emphasised that the process was transparent, and that an independent board had been established to review the valuations. While the third party had presented its valuations, to the knowledge of Minister MFEI, Government had based its conclusion on the board's valuations. Elaborating in this respect, the Minister MFCC maintained that the legal and procedural requirements had been adhered to, and attempts at reaching an amicable solution were in line with these requirements.

1.2.14 Media attention was also directed to the proximity of the conclusion of the expropriation to the 2013 general election. Referring to enquiries by the IAID as to whether the principle of good financial management was adhered to, given that the contract was signed only a few days before the election, the Minister MFCC stated that it would have been irresponsible not to conclude the process since the process had commenced considerably earlier. Moreover, after the change in Government, the embellishment of the site was seen through. The Minister MFCC maintained that he did not have any conflict of interest and that he had not met with the owner of the Fekruna Bay property. The Minister MFEI reiterated that stated by the Minister MFCC in that the process of expropriation had commenced in 2010 and was not to be interrupted due to an election. Moreover, the Minister MFEI indicated that he was not involved in the process as he was not the minister responsible for land when the expropriation was concluded.

1.2.15 In January 2016, in reply to a newspaper editorial, the Minister MFCC indicated that the first part of the expropriation had taken place in summer 1996, following public protests due to the lack of accessibility to the foreshore and an Ombudsman's report calling on the Government to guarantee accessibility. In 2013, after the conclusion of court litigation, the second part of the expropriation was completed. Following the 2008 elections, and in line with a prior public commitment by the Nationalist Party, Government had identified five privately-owned areas of scenic beauty that it intended to acquire for public use. These comprised the Riviera Martinique at Ġhajj Tuffieħa, Ulysses Lodge at Ramla Bay in Gozo, the Festival Apartments in Mellieħa, the Tiguglio complex at St Julians and Fekruna Point at St Paul's Bay. Of the five sites identified, negotiations by the PEC with respect to the Fekruna Bay site were concluded towards the end of 2012.

1.3 The Site at Fekruna Bay, St Paul's Bay

1.3.1 In a contract of donation and sale, dated 9 October 1987, Fekruna Ltd acquired 3,057 square metres of land in Fekruna Bay from a third party. The land contracted comprised:

- a. the Fekruna Bar and Restaurant (subsequently named Mare D'Oro Restaurant) and surrounding land, aggregately measuring 1,477 square metres;
- b. a divided portion of land measuring 1,108 square metres, bordering the Fekruna Bar and Restaurant on the north; and
- c. the perpetual sub-utile dominium of a portion of divided land covering an area of approximately 472 square metres.

The land, situated in the northern tip of Xemxija Bay, was highly visible from distant views and bounded the secluded Daħlet il-Fekruna.

1.3.2 Following the 9 October 1987 contract, Fekruna Ltd became aware of the fact that the third party from whom it had acquired the property did not own a portion of the land measuring approximately 490 square metres. Since this land occupied a substantial part of the restaurant, Fekruna Ltd purchased the relative land from Government, unencumbered, through a contract dated 28 July 1993, for the sum of Lm14,000 (€32,611).¹

1.3.3 On 12 July 1996, a declaration by the President of Malta was published in the Government Gazette stating that land at Fekruna Bay having an area of approximately 1,347 square metres was required for a public purpose and that it was to be acquired by absolute purchase. Following a constitutional court case and an appeal, on 30 May 2007, Government and Fekruna Ltd entered into a contract of sale for this land, representing the foreshore at Fekruna Bay. Government paid Lm375,309 (€874,235) for the expropriated land and was also compelled to pay an additional sum of Lm128,709 (€299,811), representing the interest due at the annual rate of five per cent from 12 July 1996 to the date of the contract.

¹ The conversion rate applied throughout the report was €1:Lm0.4293.

- 1.3.4 The 30 May 2007 contract did not include the sub-directum dominium of a portion of the land contracted measuring 718 square metres. The Government purchased this sub-directum dominium through a President's Declaration in the Government Gazette dated 31 January 2008 and offered compensation of €57,513.
- 1.3.5 More recently, following the publication of the President's declaration in Government Gazette notices 176 and 177 on 4 March 2013, Government expropriated two adjacent plots of land in Fekruna Bay previously forming part of the Fekruna beach lido and restaurant. Notice 176 related to the expropriation of plot A, measuring approximately 952 square metres, whereas notice 177 related to plot B, measuring approximately 491 square metres. The compensation for plots A and B amounted to €3,300,000 and €1,700,000, respectively.²
- 1.3.6 Prior to its demolition, the facility, which had included a restaurant and a beach lido within a three-storey terraced structure above quay level, was in a state of abandonment beyond structural repair. Furthermore, the property had a history of planning applications and enforcements, with the previous owners applying for a number of developments, including a high-density residential development. All applications submitted had been refused or dismissed.

1.4 Methodology

- 1.4.1 This investigation was conducted in accordance with Para 9(a) of the First Schedule of the Auditor General and National Audit Office Act (Act XVI of 1997) and in terms of practices adopted by the NAO.
- 1.4.2 Findings presented in this report are based on interviews, taken under oath, with persons who were directly involved in the process of acquisition. These included the Parliamentary Secretary Revenues and Land (hereinafter referred to as the PS Revenues and Land), later appointed as Minister MFCC, the Minister MFEI, three DGs GPD, the Commissioner of Land (CoL), the Chair Arbitration Committee, the Secretary to the Arbitration Committee, a MEPA official and the Director Fekruna Ltd. All the interviews held were transcribed by the NAO and a copy submitted to the interviewee, who was requested to endorse the transcript and submit clarifications, if required.
- 1.4.3 In seeking to obtain details regarding the valuations of the site expropriated and of the government-owned land transferred in exchange as compensation, queries were made to members of the PEC and the Arbitration Committee. Other background details and clarifications regarding the case were sought from the Minister for Tourism, Culture and

² A discrepancy of 267 square metres arises when a comparison of the measurements of the expropriated land to those of the land acquired by Fekruna Ltd in 1987 is made. In clarifications submitted to the NAO, the incumbent CoL explained that in previous contracts pertaining to the site, the site drawings were not surveys but sketches, and that since the site included a rocky foreshore, measurements could be inaccurate. In fact, in the 1987 contract referred to in paragraph 2.2.1 of this report, the areas were quoted in a way that implied that the measurements could differ to those cited.

the Environment (hereinafter referred to as Minister MTCE), the Head of Secretariat of the Office of the Prime Minister (OPM), the DG Budget Office, the Adviser to the PS Revenues and Land (hereinafter referred to as Adviser PS Revenues and Land) and the GPD-appointed architects. Public officers cited throughout the report, unless otherwise specified, are referred to by their designation at the time reported on.

- 1.4.4 Additional information was sought from the incumbent CoL, who assisted the NAO in the interpretation of the legal provisions stipulated in the Land Acquisition (Public Purposes) Ordinance (Chapter 88). Clarifications and supplementary information were also sourced from the incumbent Commissioner for Revenue, the Executive Chair Planning Authority and the Acting DG GPD.
- 1.4.5 Aside from interviews held and written submissions obtained, the NAO examined all the documentation retained by the GPD relating to the land in Fekruna Bay, St Paul's Bay and the two sites that were granted in exchange for the expropriated site. Furthermore, the NAO reviewed an IAID report dated 1 October 2015, which focused on four property exchanges identified in another IAID report dated 28 August 2015 report, one of which related to the expropriation of the property at Fekruna Bay. The IAID engaged the services of an advisory firm to carry out an independent valuation of the three properties involved in the exchange between Government and Fekruna Ltd. This Office also examined all other documentation and information provided by the interviewees during the course of the audit.
- 1.4.6 Allegations brought to the attention of the NAO were duly scrutinised and the resultant findings reported on. 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 on the evaluation of such documentation and information supplied, which was thoroughly analysed by the investigating team.
- 1.4.7 In line with its guiding principles of independence, fairness and objectivity, the NAO sought to ensure that the allegations brought to its attention were evaluated, investigated and objectively reported on. The investigating team sought to establish the facts based solely and exclusively on evidence at its disposal. The NAO sought to identify any possible shortcoming or irregularity and put forward recommendations essentially meant to ensure that the best use of public resources is made.

Chapter 2

Expropriation of Land and Property at Fekruna Bay, St Paul's Bay

2.1 Background

- 2.1.1** On 20 January 2010, the DG GPD informed Fekruna Ltd that Government was considering the acquisition of property belonging to the Company since it was required for a public purpose. Subsequently, Government expropriated two plots of land, owned by Fekruna Ltd, on 4 March 2013, following the publication of the President's declaration in Government Gazette notices 176 and 177. Both notices were made under Article 3 of the Land Acquisition (Public Purposes) Ordinance (Chapter 88), published in terms and for the purposes of Article 9(1) thereof. Notice 176 related to the expropriation of a plot of land in St Paul's Bay measuring approximately 952 square metres, with compensation offered at €3,300,000. The other plot of land, expropriated through notice 177, also in St Paul's Bay, measured approximately 491 square metres and relevant compensation set at €1,700,000.
- 2.1.2** A contract of exchange was entered into between Government and Fekruna Ltd on 5 March 2013, by means of which Government acquired the two plots of land in Fekruna Bay, valued jointly at €4,972,007. In return, Government transferred to Fekruna Ltd land at Ta' Wied Għollieqa, limits of San Ġwann, measuring 3,012 square metres, and land at Ta' Xgħajrat, in Swieqi, measuring 2,630 square metres. The contract specified that the land transferred by Government was valued at €4,271,583. The difference, amounting to €700,424, in favour of Fekruna Ltd, was offset against amounts due to Government by the Company in lieu of capital gains tax and duty on documents.
- 2.1.3** However, prior to this expropriation, Government had already expropriated the foreshore at Fekruna Bay from Fekruna Ltd. This land, expropriated in July 1996, bounded the property expropriated in March 2013. Hereunder is an account of the two expropriations.

2.2 Expropriation of the Foreshore at Fekruna Bay

- 2.2.1** On 9 October 1987, in a contract of donation and sale, Fekruna Ltd acquired land at Fekruna Bay, St Paul's Bay from a third party, namely:
- the Fekruna Bar and Restaurant³ and surrounding land measuring 1,477 square metres, subject to an annual and perpetual ground rent of Lm0.10 (€0.23) payable to Government⁴ and otherwise unencumbered save for a right of passage on the northern part;

³ The Fekruna Bar and Restaurant was subsequently renamed the Mare d'Oro Restaurant.

⁴ It must be noted that Fekruna Ltd redeemed this ground rent on 18 April 2007.

- b. a divided portion of land measuring 1,108 square metres, bordering the Fekruna Bar and Restaurant on the north, with all its rights and appurtenances. This portion of land was subject to an annual and perpetual sub-ground rent of Lm684 (€1,593); and
- c. the perpetual sub-utile dominium of a portion of divided land covering an area of approximately 472 square metres. This portion of land was subject to an annual, revisable and perpetual sub-ground rent, which at the time of the contract was Lm834 (€1,943) and was otherwise unencumbered.

2.2.2 Following this contract, Fekruna Ltd became aware of the fact that a portion of the land, measuring approximately 490 square metres, was not owned by the third party from whom the Company had acquired the property. Since this land occupied a substantial part of the Mare d'Oro Restaurant, Fekruna Ltd purchased the relative land from Government, unencumbered, through a contract dated 28 July 1993 for the sum of Lm14,000 (€32,611).

2.2.3 In correspondence dated 29 September 1994, the Planning Authority⁵ informed the CoL that during a meeting held on 1 September 1994, the members of the Authority upheld a motion to implement the structure plan policies with regard to coastal and shoreline protection. In this context, the Planning Authority requested the CoL to initiate the procedures necessary in implementing these policies. To this end, privately owned areas of the coastline that were being utilised for commercial purposes to the detriment of the public were to be expropriated. In this case, specific reference was made to Fekruna Bay and the shoreline access to it. On 22 March 1995, the Minister for the Environment, the Hon. Dr Francis Zammit Dimech, requested the CoL to take the necessary action, including expropriation if required, to ensure the right of access to Fekruna Bay, following concerns raised by residents.

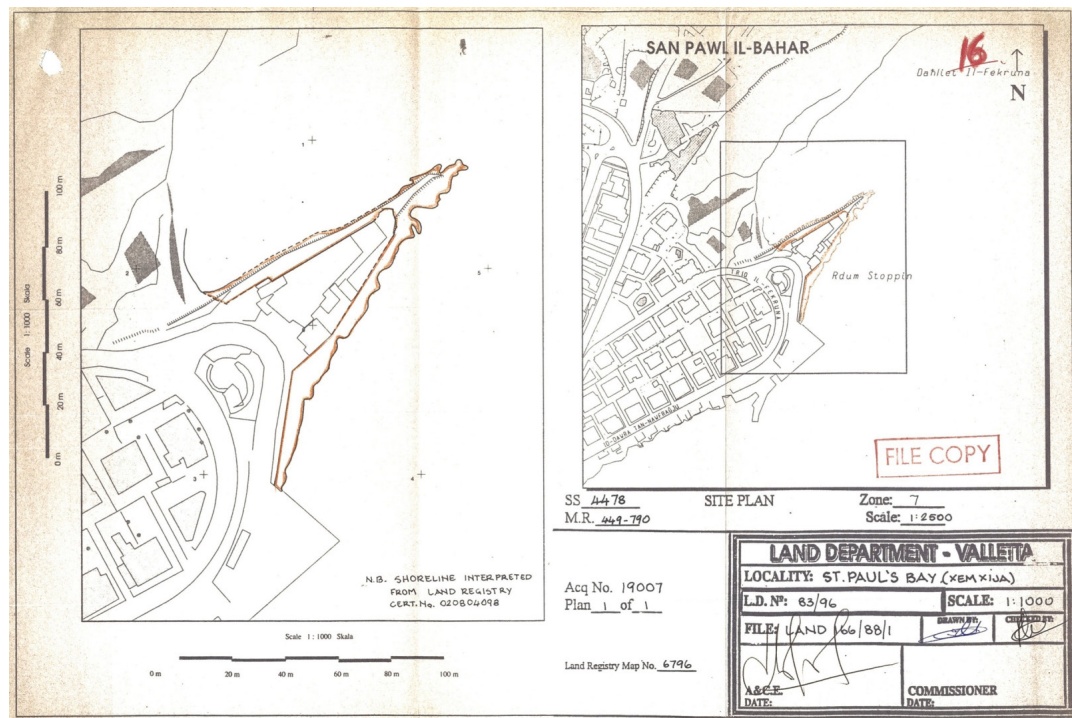
2.2.4 Developments were registered on 6 May 1996 when the Planning Authority submitted a plan of the land that was to be expropriated for the approval of the Minister for the Environment prior to referral to the Land Department⁶ for necessary action.

2.2.5 Shortly thereafter, the Ombudsman authored a report, dated 27 May 1996, regarding the lack of accessibility to Fekruna Bay. The review by the Ombudsman followed the receipt of a complaint dated 28 November 1995, a copy of which had also been published in the media. In the Ombudsman's report, reference was made to a press release issued by the Planning Authority, dated 15 June 1994, wherein it was announced that part of an application submitted in relation to the Fekruna Bay site had been rejected as it impeded public access to the foreshore and that the Authority was committed to ensure such accessibility. Furthermore, the press release noted that no extensions would be allowed on the land surrounding the Mare d'Oro Restaurant and that enforcement action would be taken against the applicant for the works carried out without a permit. Nonetheless, the Ombudsman noted that the Planning Authority was not effecting the decisions taken and that the authorities had delayed in enforcing such decisions. The Ombudsman also criticised public officials for their lack of assertiveness in tackling the matter. In submissions made to this Office, the PS Revenues and Land stated that one of the consequences of this report was that the foreshore had to be expropriated in order to ensure public accessibility.

⁵ The Planning Authority was reorganised as the Malta Environment and Planning Authority in 2001.

⁶ In 1997, the Land Department was reorganised as the Government Property Department.

Figure 1: Foreshore at Fekruna Bay Expropriated in 1996



2.2.6 The matter was concluded on 4 July 1996, with the declaration by the President of Malta authorising expropriation. According to the declaration published in the Government Gazette dated 12 July 1996, land at Fekruna Bay having an area of approximately 1,347 square metres was required for a public purpose as per the provisions of the Land Acquisition (Public Purposes) Ordinance (Chapter 88) and was to be acquired by absolute purchase. Appended to the declaration were land drawings indicating the expropriated site, reproduced in Figure 1.

Constitutional Court Case and Appeal

2.2.7 The directors of Fekruna Ltd filed an application in the Constitutional Court against the CoL on 24 July 1996, citing that the expropriation breached their fundamental human rights. The plaintiffs claimed that they were denied a substantial part of their considerable investment made on their property. Furthermore, even though the property in question was private, the plaintiffs stated that they had always permitted free access to the parts of the bay traditionally used for swimming by the public; thereby negating the public benefit that was to be gained through the expropriation. The plaintiffs stated that several touristic projects occupied part of the foreshore and prohibited access to it without this land ever being expropriated for a public purpose. The plaintiffs claimed that such public purpose appeared to exist only with respect to their land. Furthermore, this selective choice, which was allegedly not based on any rational justification, created a discrimination prohibited by Article 14 of the European Convention on Human Rights (ECHR). The plaintiffs complained that they could not understand why the land was required by Government for a public purpose when Government had sold this land to them three years earlier and nothing had

changed in the interim. The plaintiffs claimed that the public purpose for the expropriation as required in terms of Article 37 of the Constitution and Article 1 of the First Protocol to the ECHR did not exist. The plaintiffs further maintained that even if the public purpose did exist in this case, the indispensable proportionality between such purpose and the breach of the plaintiffs' fundamental human rights did not. The plaintiffs requested the Court to provide them the remedies it deemed appropriate, including declaring that Government taking possession of their property was in breach of their fundamental rights as cited in Article 14 of the ECHR.

2.2.8 In reply, on 5 August 1996, the CoL stated that the public interest with respect to this expropriation was for the public to have access to and make use of the foreshore. The CoL declared that the plaintiffs had denied the public access to the foreshore and that through the expropriation access to the bay was ensured. Newspaper articles were attached to the reply to corroborate that stated. In the reply, reference was made to several European Court of Human Rights (ECtHR) rulings regarding the concept of public interest, which cases served to legitimise the course of action taken by Government in this matter.⁷ The CoL also denied the plaintiffs' claims of discrimination on the basis that the plaintiffs had not stated the grounds of discrimination, which were required in claims of a breach of Article 14 of the ECHR. Regarding the plaintiffs' claim of a lack of proportionality between the public purpose and the breach of their fundamental human rights, the CoL stated that the ECtHR had only applied the proportionality principle in cases relating to prisoner correspondence and the right to freedom of expression. Therefore, the plaintiffs' proportionality claim did not apply to or exist in this case.

2.2.9 The Court, in its judgment delivered on 4 June 1997, noted that Government had decided to reclaim part of the land that had been transferred to Fekruna Ltd and another portion of land that the Company had acquired from third parties, which together formed the entire foreshore of Fekruna Bay. The Court noted that the expropriated land formed a perimeter around the establishment operated by Fekruna Ltd. The Court declared that the taking of possessions and property of the plaintiffs breached their human rights. Consequently, the Court declared that the land in question had been expropriated without abiding to the requirements established by the Constitution and the ECHR, and the plaintiffs had been discriminated against as a result of this expropriation. The Court declared the expropriation that came in force through the President's Declaration dated 12 July 1996 as null and ordered the CoL to pay the plaintiffs compensation of Lm1,500 (€3,494) due to the negative publicity to their commercial establishment.

2.2.10 The Land Department appealed this decision on 22 September 1997. In its sentence dated 24 May 2004, the Court of Appeal argued that the expropriation was intended for the public to have free access to the Fekruna Bay and deemed this a very clear public interest. The Court

⁷ Lithgow ECtHR 8/7/86 Series A No. 12; Fredin vs Sweden 13 ENR 78418/2191 Series A No. 192; Van der Musselle vs Belgium 6 ENR163 23 November 1983 Series A No. 70.

of Appeal noted that the ECtHR made reference to a 'wide margin of appreciation' with regard to the concept of 'public interest'.⁸ The Court of Appeal concluded that the original Court decision did not delve into the proportionality between the aim that Government was to achieve and the protection of the individual's human rights. The Court quoted the ECtHR, wherein it was stated that, "...there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions... Thus the balance to be maintained between the demands of the general interest of the community and the requirements of fundamental rights is upset if the person concerned has had to bear a 'disproportionate burden'".⁹

2.2.11 In this context, the Court of Appeal stated that the proportionality element was satisfied, and that Article 37 of the Constitution and Article 1 of the First Protocol to the ECHR were not breached. However, the Court noted that this did not mean that Fekruna Ltd was not discriminated against, as per Article 14 of the ECHR read alongside Article 1 of the First Protocol to the ECHR, since there were others who owned parts of the foreshore that were inaccessible to the public and were not being expropriated. The Court stated that the just solution was not to declare the expropriation null, since the public ought not to be penalised for Government's lack of enforcement measures, but to grant compensation for moral damages with respect to the discrimination suffered. The Court of Appeal revoked the former decision while confirming that the expropriation breached Fekruna Ltd's fundamental rights protected by Articles 37 of the Constitution, Article 1 of the First Protocol to the ECHR, and Article 14 of the ECHR read alongside Article 1 of the First Protocol to the ECHR. It also confirmed the sum of Lm1,500 (€3,494) to be paid as moral damages to Fekruna Ltd.

The Valuation of Land and the Contract of Sale

2.2.12 Following the determination of the court case, the GPD sought to establish the value of the expropriated land. To this end, on 5 April 2005, the GPD engaged an architect, hereinafter referred to as Architect A, to provide advice to the CoL in determining the compensation due in respect of the expropriated land at Fekruna Bay. On 14 April 2005, Architect A estimated the value of the land at Lm475,000 (€1,106,452). This estimate was based on land with an area of approximately 1,347 square metres, of which, 590 square metres constituted developable land and 757 square metres were agricultural. In addition to the Lm475,000 (€1,106,452), the GPD calculated that Lm215,181 (€501,237) was payable to the owners of the expropriated land as damages incurred at an annual rate of interest of five per cent from the date of expropriation. In total, the amount that was to be paid by Government amounted to Lm690,181 (€1,607,689). The GPD sought funds to settle the compensation due to Fekruna Ltd from the Ministry for Rural Affairs and the Environment on 15 June 2005; however, the Department was referred to the Ministry for Resources and

⁸ Former King of Greece and Others v Greece, 23 November 2000, para. 87.

⁹ Pincova and Pink v The Czech Republic, para. 52.

Infrastructure as the matter was deemed relevant to this Ministry. The matter remained unresolved with the Ministry for Resources and Infrastructure maintaining that it had not instigated the expropriation, while the GPD insisted that proceedings were triggered by the Permanent Secretary within the then Ministry for the Environment, duly signed by the Minister. On 12 December 2005, the DG GPD provided the Minister for Justice and Home Affairs, the Hon. Dr Tonio Borg, with the salient details outlining developments relating to the case, as the Department now formed part of his portfolio.

2.2.13 On 3 May 2006, the CoL obtained another valuation with respect to the expropriated land at Fekruna Bay. This valuation was jointly compiled by two architects, hereinafter referred to as Architects B and C, who valued the land at Lm400,000 (€931,749). In the valuation report, Architects B and C noted that a number of factors had been considered in establishing value. These included the locality, the reduced value of the present building without the use of land, the easements burdening the property and the fact that the land was within a development zone according to temporary scheme 6 issued by the Planning Authority in 1992. In submissions made to this Office, the CoL stated that the GPD periodically updated its valuations, which were ordinarily carried out independently of previous valuations.

2.2.14 The NAO noted that Architects B and C submitted another valuation of the expropriated land at Fekruna Bay on 6 November 2006. According to this valuation, compiled following the 2006 amendments to the Land Acquisition (Public Purposes) Ordinance (Chapter 88), Architects B and C revalued the property at Lm80,000 (€186,350) based on the prevalent market values in 1996. In carrying out the valuation, Architects B and C took in consideration the factors employed in the previous valuation. Following queries raised by the NAO, the CoL stated that this valuation had likely been required so that the GPD could estimate the interest due on the compensation payable.

2.2.15 On 5 December 2006, the DG GPD informed Fekruna Ltd that the contract of transfer was to be shortly entered into and that the compensation due with respect to the expropriated land amounted to Lm400,000 (€931,749), while interests accrued in accordance with the Acquisition of Land (Public Purposes) Ordinance (Chapter 88) amounted to Lm125,194 (€291,624). Therefore, the total sum due to Fekruna Ltd amounted to Lm525,194 (€1,223,373).

2.2.16 The certificate of title was issued by the Land Registry on 5 February 2007, following which, Fekruna Ltd submitted correspondence to the GPD regarding the different rights and appurtenances burdening the expropriated land. On 7 March 2007, the CoL instructed Architect B to apportion the value of the free and unencumbered property as established in the valuation reports, dated 3 May 2006 and 6 November 2006, according to the different titles of ownership constituting the expropriated Fekruna Ltd property. To this end, on 24

April 2007, Architect B submitted a report specifying that the Lm400,000 (€931,749) was to be apportioned as follows:

- a. Lm24,690 (€57,513) for the share of the sub-directum dominium;
- b. Lm198,416 (€462,185) for the share of the sub-utile dominium; and
- c. Lm176,894 (€412,051) for the value of the part of the land that was free and unencumbered.

2.2.17 Architect B also apportioned the valuation of Lm80,000, established according to the 1996 market rates, as follows:

- a. Lm0.81 (€1.89) for the share of the directum dominium;
- b. Lm19,164 (€44,639) for the share of the sub-directum dominium;
- c. Lm35,378 (€82,408) for the utile dominium; and
- d. Lm25,458 (€59,301) for the share of the sub-utile dominium.

According to the report, Architect B had been informed by the GPD that a schedule for the redemption of ground rent had been deposited on 18 April 2007.

2.2.18 On 30 May 2007, Government and Fekruna Ltd entered into a contract of sale for the land at Fekruna Bay measuring 1,347 square metres, segmented in three portions:

- a. a portion of land measuring approximately 629 square metres, free and unencumbered from third party rights other than for a right of passage in favour of Government;
- b. a portion of land measuring approximately 237 square metres, free and unencumbered from third party rights. This portion of land was subject to an annual and perpetual ground rent and sub-ground rent of Lm1,356 (€3,159); and
- c. a portion of land measuring approximately 481 square metres, free and unencumbered from third party rights. This portion of land was subject to an annual and perpetual ground rent and sub-ground rent of Lm619 (€1,442).

2.2.19 The amount paid by Government to Fekruna Ltd for the expropriated land was Lm375,309 (€874,235). Stipulated in the contract was Government's obligation to pay an additional sum of Lm128,709 (€299,811), which represented the interest due at the annual rate of five per cent from 12 July 1996 to the date of the contract. The seller was also bound to appear on a contract of correction within fifteen days from the date of notification by Government if the amount that was due as ground rent or sub-ground rent was incorrect.

2.2.20 The NAO noted that the contract between Government and Fekruna Ltd did not include the share of the sub-directum dominium referred to in paragraph 2.2.14(a), valued at Lm24,690 (€57,513). This share of ownership was eventually acquired by Government on 31 January 2008, when Government purchased the perpetual sub-directum dominium of the plot of land measuring 237 square metres and the plot of land measuring 481 square metres. The compensation offered, according to the valuation published with the President's Declaration, was €57,513, duly published in the Government Gazette No. 18,181.

2.3 Expropriation of the Property at Fekruna Bay

2.3.1 Following the conclusion of the expropriation of the foreshore, Government initiated proceedings that were to lead to the expropriation of the Mare D'Oro Restaurant at Fekruna Bay. The NAO sought to establish the events that led to the identification of this property, understand the public purpose that was to be served and review the process of expropriation.

Public Purpose and Initial Proceedings

2.3.2 Queries regarding the public purpose that was to be served by means of this expropriation were directed to the Minister MFEI and the PS Revenues and Land. In submissions made to this Office, both made reference to Measure 150 of the Nationalist Party electoral manifesto 2008-2013: *"Nwaqqfu Fond għall-Kampanja fi sħubija mas-soċjetà ċivili, sabiex tkun tista' tiġi akkwistata art barra l-konfini biex tiġi ritornata għall-istat naturali tagħha, jiġi żgurat aċċess akbar għall-kampanja u titħalla għat-tgawdija tal-pubbliku u tal-ġenerazzjonijiet futuri."*¹⁰ According to the PS Revenues and Land, this measure related to privately-owned properties that Government intended to return to the public. The PS Revenues and Land stated that the Prime Minister had specifically entrusted him with the implementation of this measure at the beginning of the 2008-2013 legislature. Towards mid-2008, the Head of Secretariat to the Prime Minister (hereinafter referred to as Head of Secretariat OPM) informed the Minister MFEI and him of a number of sites that were to be acquired by Government, either because of their environmental or historical value, in order to impede their development and/or to ensure their enjoyment by future generations. The sites identified were the Riviera Martinique in Għajn Tuffieħa, the Ulysses Lodge at Ramla l-Ħamra in Gozo, the Festival Apartments in Mellieħa, the Tiguglio complex in St Julians and the Fekruna Bay site. The PS Revenues and Land noted that a number of these sites, such as the Fekruna Bay property and the Riviera Martinique, had been identified by MEPA. The Minister MFEI confirmed that the sites had been referred by the OPM.

2.3.3 Elaborating in this respect, the PS Revenues and Land argued that the expropriation of these sites would have entailed a significant cost to Government and it was in this context that priority was to be established based on feasibility. The Minister MFEI corroborated that stated by the PS Revenues and Land, maintaining that at the beginning of the legislature, significant emphasis was placed on the implementation of Measure 150; however, this was postponed for financial reasons. To avert the financial impasse, it was proposed that compensation due to owners of expropriated sites be exchanged for government land, which proposal was favourably considered by the Minister MFEI since this did not bear a negative effect on government debt.

¹⁰ Establish a Fund for the Environment, in partnership with civil society, for the acquisition of land outside development boundaries so as to return it to its original state, to ensure better public access and preserve it for future generations.

- 2.3.4 The PS Revenues and Land stated that the Head of Secretariat OPM regularly followed up progress registered in relation to Measure 150 with the Minister MFEI, the GPD and himself. This was confirmed by the Head of Secretariat OPM, who indicated that the OPM was the lead ministry responsible for the implementation of this measure. Making reference to the efforts undertaken with respect to the sites considered by Government in terms of Measure 150, the Head of Secretariat OPM noted that progress registered with regard to the other sites was limited, constrained by diverse factors. In the case of the Riviera Martinique Hotel, Government faced major complications, including court proceedings that extended beyond 2013. Although Government undertook active negotiations with the owner of the Festival Apartments in Mellieħa, the owner did not accept the final offer made by the GPD. With regard to the Tiguglio complex in Spinola, the owner of the site was not interested in entering into negotiations with Government. Despite efforts directed towards the acquisition of the Ulysses Lodge at Ramla l-Hamra, a MEPA appeals process stalled the possibility of further negotiations. The DG GPD confirmed that stated by the Head of Secretariat OPM, maintaining that negotiations for the other sites had not been concluded because of various difficulties encountered and the direction received to conclude at least one expropriation by the end of the legislature.
- 2.3.5 In submissions made to this Office, the Head of Secretariat OPM noted that, following the 2008 general election, the portfolio of the OPM included the environment and MEPA. Moreover, the proposal for Government to consider an exchange of property to acquire the Fekruna Bay property, rather than the site being developed according to applicable policy, was initially recommended by MEPA in one of the first policy meetings held between the Authority and the OPM. According to the Head of Secretariat OPM, the idea was favourably considered and OPM requested the GPD to undertake a valuation of the site taking into account the policy regulating development on the site. The GPD assumed responsibility for the process from then onwards.
- 2.3.6 In support of this understanding, on 24 October 2008, a MEPA official submitted correspondence to the DG GPD, copying the Head of Secretariat OPM, and attached a site plan and the North West St Paul's Bay (NWSP) 24 Policy relevant to the Fekruna property. On 7 February 2009, the DG GPD requested an Adviser PS Revenues and Land, an architect by profession, to draw up a valuation of the property at Fekruna Bay. In this correspondence, copied to the Head of Secretariat OPM, the DG GPD made reference to discussions on the matter held in 2008, pursuant to instructions that had been issued by the OPM.
- 2.3.7 The Adviser PS Revenues and Land submitted the requested valuation on 12 March 2009, noting that the property consisted of a large site comprising a restaurant area and shoreline that could be further upgraded and/or re-developed in accordance with the NWSP 24. The site area under consideration had an approximate area of 1,200 square metres. The Adviser PS Revenues and Land outlined that the valuation of the site was based on a freehold estimate of €3,000 per square metre, consistent with the market value of property in the area at the time. On this basis, the land was valued at €3,600,000.

The Setting Up of the Property Evaluation Committee

2.3.8 On 10 December 2009, the DG GPD submitted correspondence to the PS Revenues and Land, copied to his Head of Secretariat and the CoL, wherein it was stated that following internal discussions, agreement was reached that a PEC was to be set up by the GPD in order to:

- a. minimise the eventuality of third parties resorting to LAB litigation in cases of expropriation of property by Government;
- b. establish the procedure, valuation criteria, and a fair and reasonable price offer for the property that was to be acquired by Government;
- c. negotiate the purchase value of the property with the owner/s within a reasonable period of time, which in any case should not exceed three months; and
- d. ensure that site inspections of the property were carried out whenever considered necessary.

Furthermore, the DG GPD recommended that the composition of the Committee was to be as follows: the DG GPD as Chair, the CoL as an ex officio member, and the DG Budget Office, the Adviser PS Revenues and Land and an architect as members.

2.3.9 The PS Revenues and Land approved the setting up of the PEC as proposed by the DG GPD on 10 December 2009. In clarifications made to this Office, the PS Revenues and Land stated that the appointment of the PEC was also approved by the Minister MFEI.

2.3.10 Documentation submitted to this Office provided a more comprehensive understanding of the role of the PEC. The terms of reference adopted by the PEC were as follows:

- a. an ad hoc committee, referred to as the PEC, would be set up and would be composed of a Chair and three members;
- b. all members would be appointed for a term of one year by the PS Revenues and Land after consultation with the Minister MFEI;
- c. the CoL was to be an ex officio member of the PEC, while the DG GPD, if not a member, was to be kept informed of all its proceedings and could attend any of its meetings;
- d. PEC members were to declare and make known any conflict of interest prior to the start of the respective proceedings and were to be exempted from taking part in the proceedings. In such case, the DG GPD was to appoint another member for that particular case;
- e. all members of the PEC were to ensure transparency in their work and deliberations and were to be in a position, at all times, to provide any information that could be demanded by the public as provided for in the Freedom of Information Act and any information required by the NAO and Government;
- f. the PEC could authorise an increase of the acquisition price offer of up to fifteen per cent at its own discretion, but was to obtain the prior authorisation of the Minister MFEI through the PS Revenues and Land for any increases over this amount;

- g. in the eventuality that the owner/s were in a position to exchange their land with Government-owned land, then the latter property could be granted as per the provisions of the Disposal of Government Land Act (Chapter 268).

2.3.11 In submissions made to this Office, the PS Revenues and Land stated that given the significant value of the lands to be expropriated, and in agreement with the Minister MFEI, it was decided to set up an independent structure to ensure that negotiations were carried out in a transparent manner. To this end, the PEC was set up to conduct negotiations with the owners of sites intended for acquisition by Government. The PS Revenues and Land noted that negotiations undertaken by a committee, rather than an individual, provided additional safeguards to the integrity of the process. Furthermore, Government considered the acquisition of land through amicable settlement as advantageous since this precluded owners of expropriated land from resorting to the LAB. In addition, the PS Revenues and Land stated that prior to the setting up of the PEC, the GPD had already communicated with the owners of the lands identified for possible expropriation in order to obtain an approximate estimation of the costs of acquisition. The Minister MFEI and the DG GPD corroborated that stated by the PS Revenues and Land, particularly emphasising Government's preference that compensation be settled through the exchange of government land, thereby averting possible referral to the LAB.

2.3.12 The NAO was unable to trace documentation regarding the appointment of the members to the PEC despite requests made, bar that of the DG Budget Office. Furthermore, the NAO established that a GPD Principal Officer served as Secretary to the Committee. According to the Adviser PS Revenues and Land, the PEC only operated for a two-year period and was subsequently replaced by the GPD Tender Committee.

Initial Proceedings of the Property Evaluation Committee

2.3.13 On 16 December 2009, the PEC held its first meeting, attended by all its members. The Chair PEC stated that the Committee was assigned two particular properties, one of which was the Fekruna Bay site, that were to be considered as pilot cases. One of the PEC members declared a conflict of interest and subsequently withdrew from proceedings. Following discussions held, the PEC decided to adopt the following procedure:

- a. a valuation of the properties was to be carried out by the Adviser PS Revenues and Land;
- b. the Adviser PS Revenues and Land was to inform the Committee of the factors considered in determining the value of the properties;
- c. correspondence was to be sent to the owners of the properties, stating Government's intention to acquire the specified sites and its willingness to initiate discussion;
- d. the owners and the PEC were to meet to discuss the proposals made by the owners; and
- e. negotiations were to be carried out.

- 2.3.14 Noted in the PEC minutes was that the owners were to present evidence of ownership of the relevant property. Furthermore, the PEC recognised that four methods of compensation were available to Government during negotiations, that is, land exchange, a part exchange of land combined with monetary compensation, monetary compensation, or a perpetual emphyteusis conditional on future redemption.
- 2.3.15 On 23 December 2009, the PEC held its second meeting, which was attended by all the members. In the minutes provided to this Office, it was noted that the PEC agreed that the member who declared a conflict of interest was to remain present during the meeting. Although the NAO was not provided with justification in this regard, this Office established that this member was not actively involved in decisions relating to the case. According to the minutes, the Adviser PS Revenues and Land presented his valuation to the PEC and indicated that this only took into consideration the building on site. The NAO noted that this was somewhat inconsistent with the valuation report submitted by the Adviser PS Revenues and Land, wherein it was indicated that the estimate was based on the value of the land. Nonetheless, during this PEC meeting, the Adviser PS Revenues and Land indicated that it was necessary for the exact dimensions of the property to be established so that a more precise valuation can be drawn up. The Committee agreed that action was to be taken in this respect so as to support effective negotiations. The Chair PEC noted that the Committee required direction as to what method of compensation it was to pursue in negotiations undertaken.

Initial Negotiations

- 2.3.16 Prior to the second PEC meeting, on 21 December 2009, the Director Fekruna Ltd submitted correspondence to the DG GPD requesting a meeting. A reply dated 29 December 2009, by the Secretary to the DG GPD, copied to the Adviser PS Revenues and Land and the DG GPD, indicated that a meeting was to be held on 11 January 2009. The NAO was not provided with any documentation relating to this matter and was therefore unable to establish whether the meeting was actually held and what was discussed.
- 2.3.17 However, on 20 January 2010, the DG GPD informed Fekruna Ltd that Government was considering the acquisition of the Company's property at Fekruna Bay since it was required for a public purpose. According to that stated in the correspondence, the GPD was seeking an amicable agreement to acquire this property; yet, this was without prejudice to the right of expropriation granted to Government under the Land Acquisition (Public Purposes) Ordinance (Chapter 88). Fekruna Ltd was to indicate the area owned by the Company and provide supporting documentation to this effect. Moreover, Fekruna Ltd was to indicate the value assigned to the property and the criteria applied in its determination. Indicated in the correspondence by the DG GPD was the fact that Government was willing to acquire the property either through an exchange with other government-owned land, payment in cash or a combination of both; however, exchange with other government-owned land was the preferred option. To this end, Fekruna Ltd was informed that Government had set up

a committee to undertake negotiations, which Committee was headed by the DG GPD. A reply was to be submitted by 9 February 2010.

2.3.18 This Office sought further clarifications to that stated in the correspondence from the Director Fekruna Ltd. According to the Director Fekruna Ltd, a meeting was convened by the GPD, wherein owners of other similar sites were informed of Government's intention to expropriate their property in line with the 2008 electoral manifesto. The owners were requested to provide the root of title to their property, but the Director Fekruna Ltd was of the understanding that he had been the only one to do so. The Director Fekruna Ltd indicated that he had applied for permits for the redevelopment of the site with MEPA in 2003; however, approval had not been granted. A list of MEPA permits and enforcement action taken by MEPA with respect to this site provided to this Office indicated that the 2003 application was suspended since the architect had not submitted the required documents within the stipulated timeframes.

2.3.19 According to the Director Fekruna Ltd, it was during enquiries regarding the possible approval of such permits that a MEPA official first made reference to the potential exchange of the Fekruna Bay site with other government-owned land. The Director Fekruna Ltd noted that this meeting took place sometime in 2007 and was attended by the Assistant Director Major Projects MEPA and a Case Officer. According to the Director Fekruna Ltd, the Assistant Director Major Projects MEPA had enquired about this possible exchange with the DG GPD; however, the latter had indicated that this was unlikely to be approved by Parliament. Notwithstanding this, the Director Fekruna Ltd indicated that he was not keen on such an exchange, preferring to develop the site. In his understanding, the idea of expropriation of his and similar sites was triggered by MEPA and eventually formalised in the 2008 Nationalist Party electoral manifesto. Despite his unwillingness to proceed with this course of action, the Director Fekruna Ltd acknowledged that reluctance in this respect was futile as legal advice obtained imparted the inevitable outcome given Government's intention to expropriate.

2.3.20 In submissions made to this Office, the Assistant Director Major Projects MEPA stated that he recalled meeting the Director Fekruna Ltd and discussing a development application with respect to the Fekruna Bay site. In parallel to the discussions with the Director Fekruna Ltd, the Assistant Director Major Projects MEPA stated that separate discussions were held regarding properties that were deemed an eyesore, particularly those built in the sixties and seventies that were presently in Natura 2000 sites or on the coast, or properties that were negatively impacting the environment and society. The Fekruna Bay property was one of a number of sites identified, including the Riviera Martinique, the Festival Apartments, the Ulysses Lodge and the Tiguglio complex.

2.3.21 The Assistant Director Major Projects MEPA confirmed that, in discussions with the Director Fekruna Ltd, he had indicated the possibility of an outright expropriation of the site or an exchange of land with Government. In addition, the Assistant Director Major Projects

MEPA confirmed that he had contacted the DG GPD to set a meeting to establish whether an exchange was possible; however, the initial reaction of the Director Fekruna Ltd was negative since he preferred to develop the site.

An Application for Development and Relevant MEPA Policies

2.3.22 Based on documentation reviewed by the NAO, the application for the development of the Fekruna Bay site was for a 33-metre high development intended for residential use to replace the existing structure. The proposed floor space of approximately 10,000 square metres significantly exceeded the current floor space of approximately 2,300 square metres. While the Assistant Director Major Projects MEPA did not recall whether an official decision had been taken, he outlined that MEPA had not considered the application favourably. When he had informed the Director Fekruna Ltd about this situation, the Director Fekruna Ltd had maintained that he had a right to develop the site according to the provisions of the Local Plan.

2.3.23 In clarifications provided to the NAO by the Planning Authority, a document dated 23 September 2003 outlining MEPA's comments on the development application was submitted. Therein, it was noted that the Xemxija Policy Map did not indicate a site-specific land use for the property. However, since the site was located on the coast and was adjacent to a residential priority area, an area of high landscape value and an area of ecological importance, then coastal zone management, urban settlement, landscape and conservation policies were relevant for determining the policy context of the site. According to MEPA, the site fell within the confines of Coastal Unit 1, which stretched from Għallis to Mistra, and the NWLP promoted the preparation of a coastal zone management plan. In this regard, the views of the Environment Protection Directorate (EPD) were to be sought for a more detailed assessment of the impacts of the development on the coast. Noted in the MEPA document was that the application submitted by Fekruna Ltd ran counter to the policy context of the emerging NWLP as it:

- a. infringed policy NWLA 2 of the NWLP, which sought to protect areas of high landscape value from visual intrusion due to the excessive height of the proposed structure;
- b. undermined the strategy of the plan for urban settlements which sought to protect residential amenity and the natural heritage of urban areas and upgrade the quality of the urban environment due to the intensification of use, excessive height and potential negative impacts on environmentally sensitive sites; and
- c. undermined conservation and coastal zone protection efforts due to potential negative impacts on areas of ecological importance.

2.3.24 The views of the EPD on the project were also submitted to this Office by the Planning Authority. The EPD report, dated 26 August 2011, noted that this area was a special area of conservation and that the proposed development was for the replacement of a dilapidated structure with a seven-storey block of apartments. It was noted that the project would

have a very significant negative effect on the views from the opposite coast and on the wider areas scheduled as areas of high landscape value, even though it was a terraced development. It was in this context that the proposed seven-storey block of apartments was considered excessive. In its report, the EPD further outlined that it found the replacement of a two-storey building with a seven-storey building in an area scheduled as an area of high landscape value unacceptable in principle and suggested that the proposed building maintain the current building height of two storeys. Noted in the report was that the proposed development was to comprise 40 residential units spread over 18,500 square metres, had a greater footprint than the existing building and that the existing building was not going to be maintained. Therefore, the proposal could qualify for an Environmental Impact Assessment (EIA) as per the EIA Regulations, 2007.

2.3.25 In seeking to understand the broader planning regulatory context applicable to the Fekruna Bay site, the NAO consulted with the Planning Authority on the matter. According to information provided, the Fekruna Bay site was within the development zone but was not included within a specific zone until 2006. On 12 July 2006, MEPA approved the NWLP, one of seven local plans for the Maltese Islands. The plan marked the Fekruna Bay site as developable and placed it in a specific zone covered by the NWSP 24 Policy.

2.3.26 The NWSP 24 Policy indicated that MEPA would favourably consider the development of the site provided that:

- a. land uses related to the coastal location of the site and could include a mix of the following use classes (Use Classes Order 1994): Class 6 food and drink, Class 9(d) leisure including beach amenities and Class 4 retail. Class 1 dwellings could be considered provided that the gross floor space did not exceed one-third of the total allowable floor space on the site and did not prejudice the primary commercial uses;
- b. the total built floor space was not to exceed the existing floor space covered by a development permission;
- c. the height of any new structure was not to exceed the height of the existing building and was not to encroach on the coast beyond the existing built and roofed-over footprint;
- d. public access to the coast was retained; and
- e. the design of the scheme was to take into account the prominent location of the site and seek to enhance the visual quality of the area through innovative use of mass and form, colour and materials within the constraints of the other criteria of the policy.

2.3.27 The Policy also indicated that the Fekruna Bay site had an area of 1,200 square metres and was located at the northern tip of the bay. It was highly visible from distant views against a background of boulder scree, scheduled for their ecological and landscape value. The Policy noted that the property on the site comprised a restaurant and a beach lido within an uninteresting three-storey terraced structure above quay level, which could be accessed from a slip road within the residential priority area. An application to establish a diving centre had been refused by the Development Control Commission in 2003 due to illegalities on site, and an application to redevelop the site into a multi-storey block of residential

apartments was still pending in 2005, following submission in 2003. The Policy sought to ensure that any development of the site retained the primary use of a leisure coastal facility, but prohibited any future intensification through limitations on additional floor space to limit the impact on the amenity of the surrounding residences. Some residential units could be considered if these were separate from the leisure uses and adequate mitigation measures to ensure compatibility were included. The high visibility and prominence of the site required particular attention to the design of any new scheme and MEPA would endeavour to achieve a high quality design that improved the area. According to the Policy, public access to the coast around the site had created major concerns in the past and MEPA wanted to ensure that any new development did not compromise access in this sense. It was noted that the Policy permitted around 1,300 square metres of development of which 433 square metres could be used for residential purposes and the rest for a mix of restaurants, shops and beach amenities.

The Valuations by the Fekruna Ltd Architect X

2.3.28 Fekruna Ltd replied to the 20 January 2010 correspondence submitted by the DG GPD on 6 February 2010, stating that the Company was willing to negotiate with a view to reach an amicable agreement instead of Government's resort to expropriation. Furthermore, Fekruna Ltd was willing to exchange its property at Fekruna Bay with other government-owned land, or accept part exchange and part compensation. Appended to the correspondence was the certificate of title issued by the Land Registry and other documentation substantiating the Company's ownership of the property. Also appended was the valuation prepared on behalf of Fekruna Ltd, which amounted to €6,750,000.

2.3.29 The Fekruna Ltd Architect X compiled a valuation, dated 29 January 2010, with respect to the property at Fekruna Bay. The report provided a description of the property, licensed as a catering establishment, fully detached and built over three floors:

- a. an upper level (level 0) consisting of an entrance lobby, a lounge bar, a large restaurant, a kitchen, a cold room, a store, toilets and a large cloakroom, and opening onto a surrounding terrace with 270-degree views of Mistra Bay, St Paul's Islands and St Paul's Bay;
- b. an intermediate level below level 0/street level (level -1), consisting of large stores, a kitchen, toilets and a large space; and
- c. a level close to the foreshore (level -2), which due to its proximity to the sea level was used as a lido, an aquatic sport facility, a bar and a take away.

2.3.30 According to the valuation report, the property had not been in use for the past six years, although the building was structurally sound. The Fekruna Ltd Architect X highlighted the fact that this unique site could be further developed to maximise its value and viability. The property measured 1,515 square metres, of which approximately 1,047 square metres were freehold while the remaining 468 square metres were subject to a revisable perpetual

ground rent. Furthermore, the property was located within the NWLP as a developable site and fell under the NWSP 24 Policy. Any development that was to be undertaken with respect to this site had to comply with this Policy.

- 2.3.31 The Fekruna Ltd Architect X made reference to the site's uniqueness, which rendered its valuation difficult. As a criterion in determining value, the Architect noted that part of the land at Fekruna Bay, measuring approximately 1,500 square metres, had been expropriated in 2006 for Lm400,000 (€931,749). The expropriated land represented a buffer zone between the existing built-up area and the sea, and therefore was not developable. The Architect noted that this valuation was based on that officially confirmed and agreed in 2006, while considering the location, area, layout plan, potential of the site according to the NWLP, and present market value. Based on these considerations, the Fekruna Ltd Architect X valued the property at €6,750,000.
- 2.3.32 The PEC held its fourth meeting¹¹ on 8 March 2010, which was attended by all members bar the CoL. During this meeting, the valuation submitted by Fekruna Ltd was discussed and it was decided that the Committee was to seek clarifications regarding the estimated value and the methodology applied. It was also decided that the Adviser PS Revenues and Land and the other architect, members of the PEC, were to carry out a valuation of the site.
- 2.3.33 The PEC held another meeting on 11 May 2010,¹² which was attended by the DG GPD, the Adviser PS Revenues and Land and the CoL. The meeting was held with the Director Fekruna Ltd, who was accompanied by his architect and lawyer. It was agreed that Fekruna Ltd was to prepare a more detailed report of the valuation carried out and submit it to the Committee.
- 2.3.34 The Fekruna Ltd Architect X presented an updated valuation report dated 9 June 2010, providing the requested workings. Architect X outlined that the site was compared to similar properties in comparable areas/localities that had either been sold in the recent past or were still on the market. The residential and the commercial parts of the property were analysed separately. In essence, the ground floor of the property, measuring approximately 1,500 square metres, represented the residential area. Levels -1 and -2 constituted the commercial part of the property, with each floor measuring 1,500 square metres.
- 2.3.35 In establishing the value of the residential part of the property, the Fekruna Ltd Architect X drew comparisons with properties in localities bearing similar characteristics to that at Fekruna Bay. Architect X argued that since the residential part of the property was at the highest level of the development, then comparisons were to be drawn with penthouses.

¹¹ The third meeting of the PEC was held on 8 February 2010; however, the property at Fekruna Bay was not discussed.

¹² Another meeting, the fifth overall, was held by the PEC on 5 April 2010; however, the Committee did not discuss matters relating to the Fekruna Bay site.

The property could be developed into three residential units of approximately 450 to 500 square metres each, with separate entrances at street level. To this end, comparisons were drawn with finished properties bearing similar characteristics identified in five localities under consideration. The average rate per square metre for each of the localities was €2,000, €2,330, €3,519, €4,538 and €5,647. In this context, Architect X established the average rate per square metre across localities as €3,600 and concluded that the estimated fair and reasonable rate for the residential part of the property at Fekruna Bay ranged between €3,500 to €4,000 per square metre.

2.3.36 The commercial part of the development included a restaurant situated at level -1 and a lido at level -2. The Fekruna Ltd Architect X noted that it was difficult to compare the commercial aspect of this property with others in different locations; however, after taking into consideration various aspects such as the location, the area and the potential development of the site, Architect X valued the restaurant at €1,000 per square metre and the lido at €500 per square metre.

2.3.37 Based on these considerations, the Fekruna Ltd Architect X estimated the total value of the property as ranging between €6,750,000 and €7,500,000 (Table 1 refers).

Table 1: Revised Valuation by the Fekruna Ltd Architect X

Level	Rate per m ² (€)	Area (m ²)	Estimated Value (€)
Level 0	3,500	1,500	5,250,000
Level -1	1,000	1,500	1,500,000
Level -2	500	1,500	750,000
Total Estimated Value			7,500,000

Property Evaluation Committee Analysis of the Valuation by the Fekruna Ltd Architect X

2.3.38 On 14 June 2010, the Secretary PEC forwarded the revised valuation, submitted by Fekruna Ltd, to the Adviser PS Revenues and Land for his review and comments. The Adviser PS Revenues and Land, in his capacity as member of the PEC, submitted his views in a report dated 18 June 2010. Commenting with respect to the valuation prepared by the Fekruna Ltd Architect X, the Adviser PS Revenues and Land indicated that the valuation was based on the principle of estimating the site's value per floor, assuming a residential use on the upper floor and commercial use on the lower two floors. The Adviser PS Revenues and Land highlighted the fact that this use was in line with the approved local plan issued by MEPA, yet was not the existing use on site. This distinction assumed fundamental importance since the building could not be immediately utilised as a residential/commercial unit without extensive refurbishment or following outright demolition and re-erection. While acknowledging that the rate of €3,500 to €4,000 per square metre as an average rate for residential use reflected market rates, the Adviser PS Revenues and Land contended that this was not the rate to be applied as the building at the time did not permit such use.

2.3.39 The Adviser PS Revenues and Land indicated that the rate of €3,000 per square metre, cited in his original estimate, was based on rates applicable to a building site and not on the present state of the building, since it required extensive refurbishment. Since the building was not considered in the original estimate compiled by the Adviser PS Revenues and Land, he deemed it fair to include the value of the basic structure. Assigning a value to the built structure, excluding finishes, resulted in a revised rate of €3,280 per square metre. Finally, it was noted that the area utilised in compiling the original estimate was 1,200 square metres, which area was based on the NWSP 24. However, citing the 1,515 square metres indicated in the report by the Fekruna Ltd Architect X, and applying a base rate of €3,280 per square metre, resulted in an overall estimate of €4,960,000. It was in this context that the Adviser PS Revenues and Land established the value as €5,000,000.

2.3.40 In summary, the difference between the two valuations submitted by the Adviser PS Revenues and Land resulted from:

- a. the difference in the site area – whereas the first valuation had been for a site measuring 1,200 square metres, following Fekruna Ltd's report it emerged that the site measured 1,515 square metres. In response to this Office's queries regarding site measurement, the Adviser PS Revenues and Land made reference to a GPD survey that had established the site as measuring 1,515 square metres; and
- b. the original estimate of €3,000 per square metre was for a bare site and not for a site with an overlying building, and hence €280 per square metre had been added, increasing the site value by approximately €400,000. In response to queries raised by the NAO as to whether it was appropriate to account for the dilapidated building as a cost (incurred for its demolition), the Adviser PS Revenues and Land explained that the value of a building site is the value of a bare site whereas the value of a site with a building constructed on it has to take both into account. Notwithstanding this, no value was assigned for the dilapidated finishes.

2.3.41 According to the minutes of the seventh PEC meeting held on 28 June 2010, the DG GPD, the DG Budget Office, the Adviser PS Revenues and Land and the CoL attended this meeting. The PEC noted that the valuation submitted by Fekruna Ltd was based on a property in a finished state, when in fact, the property, in its state at the time, was not immediately utilisable. Furthermore, were one to solely consider the value of the land, then the valuations submitted by Fekruna Ltd and the Adviser PS Revenues and Land were similar and therefore provided a basis for negotiation. Nonetheless, the Committee noted that, during negotiations, it was to indicate that the demolition of the existing building was a cost that was to be incurred by Government. The PEC concluded that another valuation from an independent architect was to be obtained.

2.3.42 Although minutes of various PEC meetings indicated the presence of the CoL, in clarifications made to this Office, the CoL maintained that he had not attended any of the Committee's meetings. Nevertheless, the CoL acknowledged that he had established the terms of reference within which the PEC was to operate.

Valuation obtained by the Property Evaluation Committee: Architect D

- 2.3.43** On 9 July 2010, the DG GPD appointed Architect D to carry out a valuation of the property at Fekruna Bay. Architect D was provided with a copy of the valuation by the Fekruna Ltd Architect X, as well as the analysis undertaken by the Adviser PS Revenues and Land. When queried on whether the provision of other valuations was prudent, Architect D stated that this practice was in accordance with the Kamra tal-Periti Valuation Standards for Accredited Valuers (2012). Architect D maintained that his review of the valuations provided was of use to the GPD and asserted that this did not influence his valuation of the property, which was carried out in an independent manner. This understanding was supported by the Adviser PS Revenues and Land, who stated that Architect D's access to valuations allowed for the verification of assumptions made and conclusions reached.
- 2.3.44** The valuation report compiled by Architect D, dated 10 July 2010, was based on the state of the property as at the time of writing of the report. Architect D outlined five standard methodologies that could be applied to evaluate land and property: the comparison, profits, residual, contractor's and investment method. In this context, Architect D deemed it appropriate to consider the site's potential given its current dilapidated state and therefore applied the investment method. In this regard, particular attention was directed to the provisions of the NWSP 24.
- 2.3.45** Architect D also reviewed the valuation by the Fekruna Ltd Architect X prior to estimating the property's market value. In this respect, Architect D stated that the valuation by Architect X, relating to the residential part of the building, was based on a comprehensive redevelopment of the site, without taking into consideration the construction and finishing costs. On the other hand, the estimate for the commercial levels was based on site value; however, such an approach necessitated the consideration of demolition costs, which were not factored by Architect X. Architect D outlined other factors affecting the value of the commercial site that were not indicated in the report compiled by Architect X, yet deemed significant. Specifically cited was the fact that the commercial development would be underlying residential property and that all foreshore areas were under public ownership. Furthermore, Architect D noted that Architect X placed a high premium on residential value estimates, yet did not consider the fact that the residential development would be directly overlying commercial use property.
- 2.3.46** Commenting on the analysis undertaken by the Adviser PS Revenues and Land, Architect D noted that this valuation distinguished between the value of the vacant site, which could be considered to reflect its investment potential, and the value of the building, which corresponded to the cost of structural works. With respect to the latter value, Architect D outlined that, since a value could be assigned to the site based on its potential following extensive refurbishment or demolition and redevelopment, the value of the building on site could be negative, reflecting the costs of demolition and disposal of debris.

2.3.47 Architect D also stated that the NWSP 24 Policy placed specific constraints on the site's potential development. He observed that estimates of market value utilised in the valuations by the Fekruna Ltd Architect X and the Adviser PS Revenues and Land had taken into consideration the Policy regarding land use, building height limitations and the quality of the development prescribed. However, it was clear that a new structure would be required to satisfy the Policy and therefore, the potential value of the site was influenced by this factor.

2.3.48 Architect D based his valuation of the property on the following considerations:

- a. a footprint area of 1,515 square metres;
- b. the fact that the building occupied a unique and high amenity site;
- c. the dilapidated state of the building;
- d. the Policy limitation on building height, to a maximum equivalent to the existing building height, that is, three levels;
- e. the fact that the Policy prescribed a high quality development under Classes 4, 6 and 9 (commercial). Class 1 (residential) could be permitted on a third of the allowable floor area; and
- f. the demolition and redevelopment costs.

2.3.49 Considering a scenario where the lower two levels would be used for commercial purposes, while the upper level used for residential development, Architect D arrived at a value of €4,999,500 (Table 2 refers). Architect D noted that the value of the residential development was influenced by its vicinity to commercial use, the demolition costs and the actual construction costs if a comparative methodology was adopted. Furthermore, the value of the site with respect to its potential commercial use was impacted by similar costs.

Table 2: Valuation by Architect D

Level	Use	Area (m ²)	Value per m ² (€)	Total (€)
Level 0	residential	1,515	2,000	3,030,000
Level -1	commercial	1,515	900	1,363,500
Level -2	commercial	1,515	400	606,000
Total Estimated Value				4,999,500

2.3.50 Architect D presented another scenario wherein the use of the entire property was limited to commercial development. In this respect, Architect D concurred with the rate established by the Adviser PS Revenues and Land of €3,000 per square metre, yet assigned a value of €3,500 per square metre due to the unique and popular location of the site. In clarifications submitted to this Office, Architect D explained that the prevailing planning policies allowed for two types of development scenarios. The second scenario presented in his valuation

considered the potential of the property assuming an exclusively commercial development and in this context, the commercial value of level 0 was estimated at a higher rate than in the first scenario presented. However, in order to account for site clearing costs, Architect D deducted €200 per square metre. The resultant estimate was also €4,999,500; therefore, Architect D concluded that the sum of €5,000,000 represented a realistic estimate of the fair value of the property.

Valuation obtained by the Property Evaluation Committee: Architect E

2.3.51 Following the receipt of the valuation prepared by Architect D, the PEC requested another valuation from a GPD Architect, hereinafter referred to as Architect E. The valuation was requested on 13 July 2010 by the Secretary PEC, and was to be concluded within 15 days. In clarifications made to this Office, Architect E stated that he could not recall whether the other valuations were in the relative file at the time of compilation of his valuation of the site.¹³ However, Architect E stated that the practice at the GPD was that other valuations on file would be temporarily extracted and reinserted at a later stage when all the separate valuations were submitted.

2.3.52 Architect E submitted his valuation of the property on 27 July 2010, outlining the factors taken into consideration, namely:

- a. an area of 1,515 square metres;
- b. the condition of the building;
- c. the NWSP 24 Policy;
- d. a willing tenant; and
- e. the fact that no account was taken of any additional bid by a tenant with a special interest.

2.3.53 Architect E outlined that since the existing structure was in a dilapidated state and therefore the redevelopment of the site was probable, the valuation was based on the potential redevelopment of the site. A rate of €3,600 per square metre was utilised by Architect E, while demolition and site clearing costs were estimated at a lump sum of €300,000. In clarifications made to this Office, Architect E stated that it was normal practice in the construction industry to quote the demolition and site clearing costs as a lump sum, rather than as a unit quantity, because each site had its own particular characteristics and therefore presented different challenges. After having considered the location, size, planning considerations and other factors bearing impact on the market value, Architect E estimated the value of the property at €5,100,000.

¹³ The €3,000 and €3,500 rates cited by Architect D correspond to the aggregated rates applied to all three levels of the property. It must be noted that the rate per square metre corresponding to each level was not specified by Architect D.

2.4 Ministerial Approval

- 2.4.1 In an email dated 29 July 2010 addressed to the PEC members, the Secretary PEC outlined the valuations that had been obtained by the Committee and enquired whether there was agreement on setting the value of €5,000,000 for the property at Fekruna Bay. The Secretary PEC noted that the Committee was to request authorisation from MFEI to proceed with negotiations on this amount and to identify government-owned property, of equivalent value, that could be exchanged for this property. All Committee members agreed with this course of action, while the Chair indicated that the request to MFEI was to be submitted through the PS Revenues and Land.
- 2.4.2 To this end, on 3 August 2010, the Secretary PEC informed the Minister MFEI, through the PS Revenues and Land, of developments relating to the valuation of the property at Fekruna Bay. Cited in this correspondence was the fact that the PEC had requested valuations from three architects, who had all independently valued the property at approximately €5,000,000. Authorisation to proceed with negotiations in this respect was requested. Furthermore, the PEC requested clearance to commence procedures for the identification of land of equivalent value that could be exchanged for this property. The Minister MFEI and PS Revenue and Lands authorised the request by the PEC on 8 October 2010.

2.5 Valuation of Lands Granted in Exchange for the Property at Fekruna Bay

- 2.5.1 The NAO was unable to establish the developments that followed ministerial authorisation through the review of documentation retained by the GPD. The ensuing documentation retained in the GPD file following the ministerial authorisation granted in October 2010 was dated January 2012 and related to the valuation of government-owned land considered for exchange. In order to establish developments registered between October 2010 and January 2012, the NAO raised queries with the Minister MFEI, the PS Revenues and Land, the DG GPD and a Principal Officer GPD who was the Secretary to the DG GPD and also served as Secretary PEC. Hereunder are the developments that could be ascertained by the NAO following queries raised and through the review of additional documentation made available to this Office.
- 2.5.2 In January 2011, a new DG GPD was appointed following the retirement of the previous incumbent who had acted as Chair PEC. Based on documentation reviewed, the NAO established that the PEC was not reconvened following its meeting of June 2010, with the process now effectively driven by the DG GPD. The newly-appointed DG GPD informed the NAO that a few weeks into his appointment, the Director Fekruna Ltd had called on him seeking to discuss previous developments regarding Government's intention to expropriate the Fekruna Bay property. According to the DG GPD, the Director Fekruna Ltd had indicated that although he was willing to accept money or land as compensation, cash settlement was his preferred option. The DG GPD had indicated that he would monitor progress; however, informed the NAO that this case was not one of his priorities given his

then recent appointment. After this, the Director Fekruna Ltd regularly contacted the DG GPD to enquire about any developments on the matter. Correspondence made available to this Office by the DG GPD supported that stated, with exchanges noted between April and May 2011.

- 2.5.3** The DG GPD sought to take stock of Government's position with respect to the sites identified for possible expropriation and, to this end, submitted a non-paper to the Minister MFEI, copied to the PS Revenues and Land, the Head of Secretariat PS Revenues and Land and the Permanent Secretary MFEI, on 28 July 2011. This non-paper was subsequently forwarded to the Head of Secretariat OPM on 8 August 2011. According to this non-paper, Government had expressed an interest to acquire a number of privately-owned sites for public use and/or for projects of national importance (Table 3 refers).

Table 3: Sites indicated in the Non-paper by the DG GPD

Site	Approximate size (m ²)	GPD Valuation (€)	Owner's Valuation (€)
Riviera Martinique, Ghajn Tuffieħa	21,244	2,230,000	n/a
Ulysses Lodge, Ramla l-Hamra	42,452	3,600,000 – 12,900,000	n/a
Sites at Tal-Qroqq, Msida ¹	5,251	7,500,000	n/a
Festival Apartments, Mellieħa Bay	8,580	4,000,000 – 8,790,000	10,100,000
Tiguglio Complex, St Julians	6,095	4,100,000 – 4,900,000	n/a
Property at Fekruna Bay, St Paul's Bay	1,515	5,000,000	7,000,000

Note:

1. Although the site at Tal-Qroqq was included by the DG GPD in the list of sites, the NAO established that this land was not to be acquired by Government with respect to Measure 150, but was an ordinary expropriation intended for a project by the University of Malta.

- 2.5.4** In the non-paper, the DG DPG sought:

- a. formal confirmation of Government's intention to acquire all or any of the above sites in order for this decision to be communicated to the owners;
- b. formulation of a priority list, ranging from the most urgent site to be acquired to the least, so that negotiations could be commenced/continued accordingly; and
- c. guidance on whether compensation was to be paid in cash, through an exchange or a combination of both.

- 2.5.5** The DG GPD indicated that although the notion of a land exchange had been proposed as a possible means of payment, not all owners would be willing to accept this option as a means of payment and that it was reasonable to assume that they would prefer, if not insist, on a cash payment. It was also noted that should Government decide that payment was to be made through an exchange, the maximum value of Government land available for exchange was in the region of €10,000,000 to €12,000,000. However, the DG GPD was of the opinion that any exchange of land in excess of this value would deplete Government's stock of land that may be required for future use. On the other hand, the DG GPD affirmed that should Government relinquish its intention to acquire any or all of the said sites, the owners were

to be advised accordingly. It would then be up to MEPA to determine the appropriate land use. The DG GPD further stated that the GPD was being inundated with requests from a number of these owners demanding that Government's intention be formally laid down and that the appropriate compensation paid. He concluded by noting that the then status quo was not tenable for much longer.

- 2.5.6 In clarifications made to this Office regarding the seeming lack of progress registered between October 2010 and January 2012, the Principal Officer GPD stated that this was probably due to a number of issues, such as the fact that a new DG GPD had been appointed and that other matters had likely been prioritised over the expropriation at Fekruna Bay. The Principal Officer GPD recalled that the DG GPD had tried to identify, through the Director Estate Management, government-owned properties that could match the €5,000,000 value of the Fekruna Bay property. In submissions to this Office, the CoL stated that it was normal practice for the Estate Management Department (EMD), a section within the GPD, to be involved in the identification of government-owned property that could be exchanged for expropriated land. The Minister MFEI and the PS Revenues and Land stated that they were unaware of progress made in the interim; however, the latter indicated that he was certain that work on the expropriation was still ongoing.
- 2.5.7 In clarifications made to this Office, the Director Fekruna Ltd recalled that a meeting had been convened by the DG GPD wherein he was informed of the €5,000,000 valuation. Also in attendance were an MFEI official and the Principal Officer GPD. The NAO sought to corroborate that stated by the Director Fekruna Ltd; however, this Office was unable to ascertain what and when meetings were held, who was in attendance and what was discussed, as no record of these meetings was retained by the GPD. Moreover, clarifications sought from officials involved presented conflicting and incomplete versions of events. Notwithstanding this, the DG GPD confirmed that he had informed the Director Fekruna Ltd of the €5,000,000 valuation of the Fekruna Bay property.
- 2.5.8 The Director Fekruna Ltd indicated that he had not contested the value assigned to the property, a decision largely conditioned by the lengthy delays experienced prior to resolution of the expropriation of the foreshore. However, the Director Fekruna Ltd maintained that he was dissatisfied with the valuation, as the site was unique and the value assigned to the property compared poorly with compensation paid with respect to the foreshore. This incongruity in value was heightened in view of the fact that the property subject to expropriation consisted of developable land and it was in this context that the Director Fekruna Ltd contended that the valuation put forward by the Company was not taken into account.
- 2.5.9 Based on documentation reviewed, the NAO established that three sites were identified for possible exchange. According to the Principal Officer GPD, these sites were identified by the EMD. According to an undated office note by the Principal Officer GPD, sites at San Ġwann, San Pawl tat-Tarġa and Swieqi were identified and relative valuations drawn up by Architect D. In clarifications made to this Office, Architect D stated that he had been

instructed to carry out the valuations of the San Ġwann and Swieqi sites by the Office of the DG GPD. Furthermore, Architect D maintained that he was unaware that the properties to be valued were connected to the Fekruna Bay expropriation. Although reference was made to three valuations, documentation on file only related to the San Ġwann and Swieqi sites. According to the DG GPD and the Principal Officer GPD, the two sites were selected for possible exchange as these had been acquired by Government through the Church-State Agreement, whereas that at San Pawl tat-Tarġa was government land and was not subsequently considered as part of the exchange. In submissions to this Office, Architect D indicated that he was not requested to prepare a valuation of the San Pawl tat-Tarġa site.

2.5.10 In clarifications to the NAO, the Director Fekruna Ltd stated that he had not identified the sites that were to be transferred by Government in exchange for the Fekruna Bay property. This was confirmed by the DG GPD, who stated that the EMD identified the sites; however, the Director Fekruna Ltd asserted that a number of other sites had been referred to in discussions with the GPD. The DG GPD stated that he had not provided the Director Fekruna Ltd with discretion in terms of the selection of sites that were to be exchanged. Thereafter, the Director Fekruna Ltd sought to obtain valuations of the sites that had been offered by Government, that is, the San Ġwann and Swieqi sites. With regard to the San Pawl tat-Tarġa site, the Director Fekruna Ltd indicated that he had been informed that the inclusion of this land in the exchange was not possible as the value of the compensation to be paid by Government would have exceeded that deemed permissible. The Director Fekruna Ltd maintained that he was informed of the exclusion of the San Pawl tat-Tarġa site during the meeting wherein the revised value of the Fekruna Bay property had been disclosed by Government, from €7,500,000 to €5,000,000. According to the Director Fekruna Ltd, this revision resulted in the elimination of the San Pawl tat-Tarġa site.

Valuations of the San Ġwann and Swieqi Sites by Architect D and Issues Arising

2.5.11 The first documentation retained on file relating to the valuation of the San Ġwann site was a minute by the Principal Officer GPD to the Director Joint Office, dated 18 January 2012, wherein the latter was requested to prepare the relevant property drawings. In this minute, the Principal Officer GPD indicated that the drawings were required in view of the urgent valuation requested by the DG GPD. The NAO was not provided with any documentation indicating the request for valuation made to Architect D by the GPD.

2.5.12 The valuation of the freehold value of the San Ġwann site was submitted by Architect D on 21 January 2012. According to the valuation, the land was within the development zone and zoned as a Residential Priority Area for detached and semi-detached dwellings (North Harbours Local Plan (NHLP) Map SG1), with a building height limitation of two floors without semi-basement (NHLP Map SG3). Architect D indicated that the site had a footprint of approximately 3,012 square metres. After taking into account the site's locality, the footprint, the cumulative land area being assessed, its potential use, the structures currently occupying part of the site and other contributory factors from assessments carried out, Architect D established the value of the site on a freehold basis as €2,635,000.

- 2.5.13** Architect D submitted the valuation of the land at Swieqi on 23 January 2012. According to the valuation, the land was within the development zone and zoned as a Residential Priority Area for detached and semi-detached dwellings (NHLP Map SW1), with a building height limitation of two floors with semi-basement (NHLP SW3). The site had a footprint of approximately 2,635 square metres. Taking into account the site's locality, its footprint and other contributory factors from the assessments carried out, Architect D estimated the value of the site on a freehold basis as €2,500,000.
- 2.5.14** The NAO verified the valuations drawn up against the relevant MEPA policies in force at the time. According to information provided by the Planning Authority¹⁴ regarding the permissible development on the San Ġwann site, the site was zoned as a Residential Priority Area in the NHLP of 2006. Applicable policies were the NHHO02, the NHSE04 and the NHSG05 of the 2006 NHLP and policies 3.2 and 3.5 of the Policy and Design Guidance of 2007. These policies permitted the development of detached or semi-detached villas with site coverage of 40 per cent, a site curtilage of three metres, a maximum of two habitable floors, soft landscaping with respect to 20 per cent of the site area and a garage in the side curtilage. The subdivision of the units into flats or maisonettes was also permitted, subject to a minimum floor space of 150 square metres per dwelling. Information provided by the Planning Authority regarding the permissible development on the Swieqi site indicated that the site was covered by the NHSW05 Policy in the NHLP. Developments on the site could either be detached or semi-detached villas with a maximum of two floors, a minimum site area of one tumolo and a 30 per cent maximum site coverage. It was noted that other policies in the Policy and Design Guidance of 2007 also permitted the subdivision of each building into four dwellings.
- 2.5.15** From documentation retained on file, this Office could not ascertain the developments registered subsequent to the submission of valuations by Architect D. It was unclear to the NAO whether negotiations followed the establishment of value, as no documentation to this effect was made available. The only documentation indicative of discussions underway was correspondence submitted by the Principal Officer GPD to the Assistant Director Contracts GPD on 19 April 2012. In this correspondence, reference was made to a meeting held on 18 April 2012 between the DG GPD and Fekruna Ltd, where the issue of payment of capital gains tax by the Company was raised. In clarifications made to this Office, the DG GPD stated that he had met the Director Fekruna Ltd between three to five times and that the Director Fekruna Ltd had indicated at the outset that he was not in a position to settle the capital gains tax arising from this exchange. In the circumstances, the DG GPD had considered that payment due to the Company was to consist of land transferred in exchange and monetary compensation, the latter of which would enable the payment of the capital gains tax and duty payable on the contract.

¹⁴ As from April 2016, MEPA was restructured, with responsibility for planning regulations hived off to the Planning Authority.

Resolution through Arbitration

- 2.5.16** Although no records of negotiations were retained, no minutes of meetings kept and no documentation of correspondence exchanged made available, the NAO established that Fekruna Ltd was in disagreement with the valuations of the San Ġwann and Swieqi sites. In an undated office note recorded on the relative GPD file, it was indicated that Fekruna Ltd deemed the valuations of the land at San Ġwann and Swieqi as being too high. In view of this disagreement, the DG GPD proposed that a committee was to be set up in order to arrive at an acceptable value, with specific reference made to arbitration. The Committee, hereinafter referred to as the Arbitration Committee, was to be chaired by an acquaintance of the DG GPD, whom he had nominated on the basis of his expertise and integrity. The Chair was to be assisted by two architects as members, Architect D was to represent the GPD, while a Fekruna Ltd-appointed architect, hereinafter referred to as Fekruna Ltd Architect Y, was to represent the Company. The Principal Officer GPD was to support the Arbitration Committee as Secretary.
- 2.5.17** According to the DG GPD, the setting up of such committees was a practice adopted by the GPD when seeking to reach an amicable settlement in determining a realistic and just value of a property. In submissions made to this Office, the Minister MFCC specified that his approval for the appointment of the Arbitration Committee had been sought and provided. Furthermore, the Minister MFCC had been assured by the DG GPD that the Chair Arbitration Committee had considerable experience in the real estate sector and was a person of integrity. In clarifications sought by the NAO, the Chair Arbitration Committee indicated that he was engaged by the DG GPD on an ad hoc basis to assist the Department in resolving cases where valuations obtained through GPD-appointed architects with respect to particular properties were widely divergent. Correspondence exchanged between the DG GPD and the Minister MFCC, at the time PS Revenues and Land, corroborated the above statements.
- 2.5.18** Furthermore, the Chair Arbitration Committee informed the NAO that his experience in the property sector was essential in this regard and that he had assisted the GPD in this manner in approximately 15 to 20 cases; however, this was the only case where he had chaired a committee. Although no formal terms of reference were established, the Chair Arbitration Committee stated that his role was administrative rather than technical and that he was effectively tasked with mediation between the two architects. Furthermore, the Arbitration Committee was to consider the San Ġwann and Swieqi sites and the Chair asserted that the Committee had not been informed of any other site for possible exchange, including that at San Pawl tat-Tarġa.

- 2.5.19 On 4 October 2012, the Secretary Arbitration Committee submitted correspondence to the Chair Arbitration Committee, Architect D and the Fekruna Ltd Architect Y, copying the DG GPD and another GPD official. Stated in the correspondence was that the GPD had identified two sites that the Director Fekruna Ltd was willing to exchange for the Fekruna Bay property. Furthermore, the Arbitration Committee was tasked with the valuation of these two sites, with relevant site plans provided.
- 2.5.20 Although documentation reviewed by the NAO made reference to several meetings held by the Arbitration Committee, this Office was only presented with correspondence evidencing two meetings held. While the Chair Arbitration Committee stated to this Office that the Committee had met around five or six times, no records were provided in relation to meetings held despite requests made. Similar requests for documentation addressed to the Secretary Arbitration Committee proved futile. On the other hand, the Director Fekruna Ltd indicated that he had not met with this Committee and that he was informed of proceedings by the Fekruna Ltd Architect Y.
- 2.5.21 According to correspondence circulated among Arbitration Committee members and copied to the DG GPD, the Committee met on 11 October 2012. The Secretary Arbitration Committee submitted a synopsis of the salient points that emerged during this meeting. In essence, the Committee discussed the accuracy of the areas captured in the relevant site drawings, the vacant possession of each site, the possible relocation of the tenant occupying the Swieqi site on an agricultural lease, matters relating to road alignment with respect to the land at San Ġwann and MEPA policies applicable to both sites. A tentative meeting was scheduled for 25 October 2012.
- 2.5.22 The subsequent meeting was in fact held on 26 October 2012, developments relating to which were again captured in correspondence submitted by the Secretary Arbitration Committee and copied to the DG GPD. The focus of the meeting was on the divergent values assigned to the sites. Regarding the San Ġwann site, the Fekruna Ltd Architect Y based his valuation on a site that consisted of nine plots, eight of which had a value of €250,000 each while the ninth was valued at €300,000, resulting in a total value of €2,300,000. On the other hand, Architect D valued the site at €2,630,000. With reference to the site in Swieqi, the Fekruna Ltd Architect Y requested Government's commitment to construct the other half of the road complementing the half forming part of the site. Furthermore, the value assigned by the Fekruna Ltd Architect Y to the Swieqi site was €1,500,000, based on two plots valued at €750,000 each. Contrary to this, Architect D based his valuation on the site's potential to accommodate four semi-detached plots, resulting in a comprehensive value of €2,500,000. According to the correspondence submitted by the Secretary, the Arbitration Committee failed to reach agreement on the valuations and therefore scheduled another meeting for 1 November 2012.

- 2.5.23 No records of this meeting were made available to the NAO, nor was this Office able to establish whether the meeting was in fact held. However, correspondence reviewed indicated that a meeting was held on 20 November 2012. The NAO was not provided with documentation specifically indicating what was discussed in this meeting; however, subsequent correspondence exchanged inferred that negotiations regarding the values assigned to the two sites were still underway.
- 2.5.24 Immediately after this meeting, the Chair Arbitration Committee submitted a summary of progress registered by the Committee to the Secretary. In this correspondence, dated 20 November 2012, reference was made to the several meetings held by the Arbitration Committee to establish a true and fair value for the San Ġwann and Swieqi sites, which were to be granted in lieu of direct financial compensation for the property at Fekruna Bay, which was to be expropriated for a public purpose. In this context, specific reference was made to Government's commitment of €5,000,000 as reimbursement. In clarifications provided to this Office, the Chair Arbitration Committee stated that while the Arbitration Committee was informed of the commitment of €5,000,000, this did not condition the assignment of value to the lands that Government was to exchange. The Chair Arbitration Committee maintained that the valuations were based on a reasoned consideration of the characteristics of the sites and a sound methodology.
- 2.5.25 In the correspondence of 20 November 2012, the Chair Arbitration Committee noted that the San Ġwann site, measuring 3,012 square metres, was located in Wied Ġħollieqa and situated in a semi-detached villa zone,¹⁵ which according to MEPA policy, allowed for a maximum of 40 per cent site coverage. The site could be segmented into nine semi-detached plots with an approximate area of 330 square metres each. Architect D valued the site at €2,630,000, attributing a value of €873 per square metre. On the other hand, the Fekruna Ltd Architect Y estimated the site's value at €2,300,000, equivalent to an approximate €763 per square metre. With regard to the site at Swieqi, measuring 2,635 square metres, the Chair noted that this was a fully detached villa zone. MEPA policy stipulated a minimum requirement of one tumolo (1,124 square metres) per structure on this site. Therefore, the maximum number of structures allowable on this site was two, with each allotted an area of approximately 1,317 square metres. Architect D valued this land at €2,500,000, in effect attributing a rate of approximately €949 per square metre. According to the Fekruna Ltd Architect Y, the value of the site was estimated at €1,500,000, resulting in a rate of approximately €569 per square metre. Having established that semi-detached dwellings were permissible on the Swieqi site according to MEPA policy applicable at the time, the NAO sought the views of the Chair Arbitration Committee. The Chair claimed that he was unaware of this option and that according to information at his disposal at the time, dwellings were to be fully detached structures with a curtilage of six metres on each side.

¹⁵ Although MEPA policy applicable at the time also classified the area as a detached villa zone, the NAO considered valuation as a semi detached villa zone as the more profitable option to Government.

- 2.5.26 The Chair Arbitration Committee considered the valuation of the site at San Ġwann by Architect D more realistic and provided a fair representation of the prevalent market situation. With reference to the site in Swieqi, the price of land in this locality was, in his understanding, capped at approximately €800,000 per tumolo. In establishing the site's value, the Chair recommended that the site, measuring 2,635 square metres, be trimmed by 387 square metres to 2,248 square metres. This reasoning was based on the fact that the minimum land required for a fully detached villa was 1,124 square metres, hence the proposed trimming of the site would efficiently accommodate two structures. As a result, the total estimated value of the Swieqi site would therefore be €1,600,000, that is, €800,000 per structure.
- 2.5.27 In this correspondence, reference was also made to the request submitted by the Fekruna Ltd Architect Y regarding road construction at the Swieqi site. The request granting Fekruna Ltd the right to open the other half of the road, belonging to Government and not forming part of this site, was deemed justifiable by the Arbitration Committee. This was deemed so since the proposed site was situated in an undeveloped area and therefore would probably take years to complete the entire width of the road. However, acknowledging that this was not normal practice, the Committee indicated that this request could be acceded to against a nominal consideration, payable by Government, of €60,000.
- 2.5.28 In this context, the Chair Arbitration Committee indicated that the estimated value for the sites at San Ġwann and Swieqi was €2,630,000 and €1,600,000, respectively, while the consideration for the right to open the other portion of the road was €60,000. Hence, the total value of both sites offered by Government in compensation for the expropriation of the property at Fekruna Bay was €4,290,000.
- 2.5.29 The Chair Arbitration Committee requested feedback from the Fekruna Ltd Architect Y regarding that discussed in the meeting held on 20 November 2012. The Fekruna Ltd Architect Y submitted comments on 24 November 2012, following consultation with the Company. Copied in this correspondence were Architect D and the Secretary Arbitration Committee.
- 2.5.30 In his reply, the Fekruna Ltd Architect Y indicated that, at €285,000, the Company deemed the value of a semi-detached plot at San Ġwann as high, and a value of €250,000 was more realistic in terms of current market prices. To this end, the Fekruna Ltd Architect Y reiterated the value previously proposed by the Company, that is, €2,300,000 (eight plots at €250,000 and one plot at €300,000). In order to mitigate the difference between this and the value of €2,630,000 estimated by Architect D, the Fekruna Ltd Architect Y proposed an average of these two valuations, that is, €2,465,000.
- 2.5.31 With respect to the land at Swieqi, although Fekruna Ltd agreed with the rate of €800,000 per tumolo, the Company noted that other areas less than a tumolo were not to be valued at this rate. In this context, Fekruna Ltd proposed the inclusion of the 387 square metres

previously trimmed, hence resulting in a total area of 2,635 square metres, equivalent to 2.34 tumoli. Applying a rate of €600,000 per tumolo to the 0.34 tumolo resulted in a value of €204,000, which when aggregated with the €1,600,000 (€800,000 per tumolo), resulted in a total of €1,804,000.

2.5.32 In total, the Fekruna Ltd Architect Y proposed that the sites at San Ġwann (€2,465,000) and Swieqi (€1,804,000) be valued at €4,269,000. Finally, reference was made to the proposal made by Fekruna Ltd to be granted the right by Government to open the full width of the road, which consideration was estimated at €31,000 (previously estimated at €60,000). Therefore, the total value of land to be exchanged for the property at Fekruna Bay was €4,300,000 (Table 4 refers).

Table 4: Final Proposed Valuation by the Fekruna Ltd Architect Y

Site	Workings	Value (€)
San Ġwann	average of two estimates (€2,630,000 & €2,300,000)	2,465,000
Swieqi	2 tumoli * €800,000 0.34 tumolo * €600,000	1,600,000 204,000
Road formation at Swieqi	lump sum	31,000
Total		4,300,000

2.5.33 The Arbitration Committee presented its report, signed by all members, in November 2012, presumably after the exchange of 24 November 2012 referred to in the preceding paragraphs. The report outlined the composition of the Committee, its mandate and provided an element of context to the valuations undertaken. Stated in the report was the fact that MFEI had committed €5,000,000 as reimbursement by Government to the owners of the property at Fekruna Bay for the expropriation of this property. The Arbitration Committee noted that, in principle, Fekruna Ltd and Government had agreed to the allocation of the sites at San Ġwann and Swieqi to the Company in lieu of direct financial compensation.

2.5.34 In the report, the Arbitration Committee noted that the valuation of the land at San Ġwann by Architect D was more realistic and gave a fair representation of the current market situation. The estimate of the site by the Fekruna Ltd Architect Y was considered below the going market rates. After considering all factors that might directly or indirectly affect the value of the land, and in an attempt to mitigate the views of both Architects representing the parties in the discussion, the Arbitration Committee concluded that the mean of the two valuations was to be applied, resulting in a value of €2,465,000 for the San Ġwann site. In clarifications made to this Office, Architect D specified that there was a six per cent difference between his valuation and that established by the Arbitration Committee. Furthermore, Architect D stated that this difference was deemed reasonable in the circumstances of the valuation, where a tract of land was to be parcelled into plots to render it marketable.

2.5.35 With regard to the site at Swieqi, the Arbitration Committee noted that the land was situated in a fully detached villa zone and that the valuation by Architect D of €2,500,000, equivalent to a rate of €949 per square metre, was congruent with going market rates for properties in the area. The Committee noted that the market value of such property had stabilised at around €1,000 per square metre, +/-10 per cent depending on the specifications. However, the Arbitration Committee acknowledged that this rate applied to sites with an area of less than 550 to 600 square metres. In this case, the value of land in this locality seemed to be capped at around €800,000 per tumolo. Therefore, the Arbitration Committee recommended that the value of the Swieqi site be estimated at the going market rate of €800,000 per tumolo for each tumolo portion, while the rest of the land, over and above the minimum MEPA requirement of one tumolo, be attributed a lower value of €600,000 per tumolo. Applying this methodology, the estimated value of the land at Swieqi was €1,806,583. The Arbitration Committee noted that this value was equivalent to a rate of approximately €685 per square metre, which was considered inferior in comparison to the prevalent market situation, given that demand had remained fairly stable in this locality. Nevertheless, the Committee deemed the proposed estimated value of €1,806,583 as reasonable and moderate for 2,635 square metres of land, particularly when one considered all the factors affecting this site, notably, that the entire parcel of land was still undeveloped and situated in an area with no roads or road alignments. A comparison of the initial valuations submitted by Architect D and Fekruna Ltd Architect Y, and the final value established by the Arbitration Committee is presented in Table 5.

Table 5: Comparison of Valuations

Site	Initial Valuation by Architect D (€)	Initial Valuation by Fekruna Ltd Architect Y (€)	Final Valuation by Arbitration Committee (€)
San Ġwann site	2,635,000	2,300,000	2,465,000
Swieqi site	2,500,000	1,500,000	1,806,583
Total	5,135,000	3,800,000	4,271,583

2.5.36 In clarifications sought by the NAO, the Chair Arbitration Committee stated that even though he was more inclined to agree with the value compiled by Architect D with respect to the San Ġwann site, the Committee had to reach a conclusion. This, the Chair argued, was in line with his role and responsibility to present a professional, technical and moderate report to Government. The Chair Arbitration Committee indicated that this was the reason why the Committee had utilised the mean value of the two valuations as a solution. With respect to the value arrived at for the Swieqi site, the Chair Arbitration Committee stated that the Fekruna Ltd Architect Y had arrived at a value that was approximately half that established by Architect D. The Chair Arbitration Committee stated that in this case, the factors influencing the value had to be studied in depth and that he had referred to the Kamra tal-Periti 'Valuation Standards for Accredited Valuers', published in 2012, as a guideline. Furthermore, the Chair claimed that the valuation of the San Ġwann site was

more straightforward as roads in the immediate vicinity were constructed hence providing access to the site, the MEPA zoning regulations were favourable and was situated in an excellent location. According to the Chair, these factors allowed one to establish an objective value. However, with respect to the Swieqi site, while the location was good, there were other attributes that negatively affected it, such as the fact that the area was barren, had no access and MEPA zoning regulations were less favourable.

2.5.37 In submissions made to this Office, the Chair Arbitration Committee stated that in the Swieqi case, the value per square metre increased proportionately until the 550 to 600 square metre mark, at which point the rate of increase tapered off, effectively implying a capping of €800,000 per tumolo. The Chair Arbitration Committee indicated that this understanding was based on research that he had carried out, primarily through reference to comparable advertised property-related data. Furthermore, MEPA stipulated a minimum requirement of one tumolo per structure. It was in this context that the Chair Arbitration Committee considered the value specified by Architect D as incongruent with the conclusions arrived at following his analysis. Given that the size of the land was slightly larger than two tumoli, the Chair Arbitration Committee considered two possible courses of action: either recommend that the GPD trim the land and in so doing resize it to precisely two tumoli, or if Fekruna Ltd maintained interest in acquiring the remaining part, have this portion of land valued. Having opted for the latter, the Chair Arbitration Committee deemed the lower value of €600,000 per tumolo (for portions of land measuring less than one tumolo) as a fair valuation of this land.

2.5.38 With regard to the matter relating to road construction at the Swieqi site, the Arbitration Committee noted that this was not compliant with standard practice, as a plot of land ordinarily included half the width of the road. In this context, the Arbitration Committee refrained from providing any guarantees or commitments insofar as this request was concerned. Furthermore, the Committee noted that this went beyond the terms of reference assigned to it by the DG GPD.

2.5.39 In conclusion, the total value of the San Ġwann and Swieqi sites, offered by Government in compensation for the expropriation of the property at Fekruna Bay, was €4,271,583.

2.6 Conclusion of the Expropriation Process

2.6.1 Following receipt of the Arbitration Committee report, the DG GPD referred the matter to the Minister MFCC in a minute dated 27 December 2012. In this minute, the DG GPD noted that it had long been the intention of Government to acquire the dilapidated building situated at Fekruna Bay. The acquisition of this property was also in line with the general direction of the white paper titled 'The Public Domain' issued by Government in December 2012. The DG GPD indicated that the property had been valued by three architects at €5,000,000 and approved by the Minister MFEI in 2010. Cited was the fact that Fekruna Ltd was willing to accept land in exchange for the compensation due; however, the Company

was not in a position to pay capital gains tax and duty on documents. The GPD had notified Fekruna Ltd that should agreement be reached, the amount of capital gains tax and duty on documents due, set at 12.5 and 2.5 per cent, respectively, would be deducted from the €5,000,000 due to the Company, resulting in a net balance due by Government of approximately €4,275,000.

2.6.2 The DG GPD indicated that an Arbitration Committee was set up and after several meetings, two sites, in San Ġwann and Swieqi, were identified. In this respect, the DG GPD requested the approval of the Minister MFCC for:

- a. the GPD to obtain a written request from the competent Ministry, duly endorsed by the Minister, to expropriate the property at Fekruna Bay;
- b. the exchange of 3,012 square metres of land at San Ġwann and 2,635 square metres of land at Swieqi; and
- c. the lodgement of a request to the MFEI for the amount of €725,000, being the remaining balance of compensation due to be paid in cash to Fekruna Ltd, which would in turn be immediately paid to the Commissioner of Inland Revenue (CIR).

The Minister MFCC endorsed the minute by the DG GPD on 28 December 2012.

2.6.3 Subsequent to the approval by the Minister MFCC, the DG GPD submitted correspondence to the Minister MTCE, the Hon. Dr Mario de Marco, on 11 January 2013, copied to the Minister MFCC. In this correspondence, the DG GPD provided details relating to the expropriation and stated that the terms of exchange had been negotiated. However, in order for the expropriation to proceed, a formal request had to be made by the competent authority, endorsed by the responsible Minister, in this case, the Minister MTCE. Although this letter was acknowledged on 16 January 2013 by the Private Secretary to the Minister MTCE, the NAO was not provided with documentation indicating that a formal request was made by the Minister.

2.6.4 Queries in this regard were submitted by the NAO to the Minister MTCE, who stated that no request, formal or otherwise, was made by him for the expropriation of the property at Fekruna Bay. In submissions made to this Office, the DG GPD indicated that while a request for the expropriation of a particular land or property by the minister concerned was an established practice, this did not emanate from a specific legal provision. In this case, the DG GPD had proceeded without the request by the Minister MTCE, as he was requested to conclude this matter prior to the 2013 election. The DG GPD had also considered the Court's decision relating to the expropriation of the foreshore and that public access to the site remained a concern. Furthermore, the DG GPD contended that the Minister MFCC and the Minister MFEI had granted their approval and that a substantial part of the consideration was in the form of land, while funds for the remaining cash settlement had been secured from the MFEI.

- 2.6.5 In clarifications provided to the NAO, the Minister MFCC also specified that there was no legal requirement that specified that a minister was to submit a formal request for expropriation to the GPD. Furthermore, the Minister MFCC maintained that the expropriation of the Fekruna Bay property was a continuation of the expropriation of the foreshore, and therefore, the request by the then Minister for the Environment was still valid. Moreover, the Constitutional Court had confirmed the public purpose that was to be served through this expropriation, that is, access to the foreshore. The Minister MFCC stated that he had never met the Director Fekruna Ltd or anyone acting on his behalf. In this case, the Minister MFCC indicated that the OPM was coordinating and following the process. This was corroborated by the Minister MFEI, who confirmed that the OPM was overseeing the process and that the Prime Minister, the Head of Secretariat OPM, the Policy Coordinator OPM and the Principal Permanent Secretary were regularly updated with developments on the matter.
- 2.6.6 Also on 11 January 2013, the DG GPD submitted correspondence to the Minister MFEI, through the Permanent Secretary MFEI. Cited in this correspondence were details relating to the expropriation of the property at Fekruna Bay and the government-owned lands identified for exchange as compensation. The DG GPD indicated that Fekruna Ltd had agreed to the exchange; however, the Company was not in a position to pay capital gains tax and duty on documents. The Minister MFEI was informed that Fekruna Ltd had been notified by the GPD that, should agreement be reached, the amount of capital gains tax and duty on documents due, set at 12.5 and 2.5 per cent, respectively, would be deducted from the €5,000,000 due to the Company, resulting in a net balance due by Government of approximately €4,275,000. To this end, the DG GPD was therefore requesting the MFEI to transfer the amount of €725,000 to the relative GPD Acquisition Vote, being the remaining balance of compensation due, which was to be paid to Fekruna Ltd and would in turn be immediately paid to the CIR. The request made by the DG GPD was approved by the Minister MFEI and the Permanent Secretary MFEI on 18 January 2013, and funds were in fact transferred to the GPD on 25 February 2013. Following queries raised by the NAO, the Chair Arbitration Committee specified that he was unaware of the tax payment due, and that this had not affected the valuations of the properties.
- 2.6.7 The agreement reached regarding the expropriation of property at Fekruna Bay was formally acknowledged by Fekruna Ltd in correspondence submitted by the Company to the DG GPD on 15 January 2013. Reference was made to previous correspondence submitted by Fekruna Ltd on 6 February 2010, wherein the Company had indicated its readiness to negotiate an amicable agreement with Government. Additional documentation was submitted by the Company on 8 February 2013, when the legal representative of Fekruna Ltd submitted the form that was to be completed to establish ownership of the immovable property subject to expropriation proceedings.

- 2.6.8 Following these developments, the GPD undertook the required preparations, necessary for the conclusion of the expropriation process. On 13 February 2013, the GPD prepared the relevant plans and initiated proceedings for the apportionment of ground rent according to titles of ownership. According to plans prepared by the GPD, the site was held by Fekruna Ltd under two separate titles of ownership and proceeded to apportion the site accordingly. In fact, of the 1,443 square metre footprint, 952 square metres were apportioned under Plot A, while the remaining 491 square metres were apportioned under Plot B. The NAO noted that this footprint differed from that of the various valuations carried out by the GPD and Fekruna Ltd, which cited an area of 1,515 square metres. In clarifications to this Office, the DG GPD explained that a variation of five per cent in land area was considered acceptable. On 15 February 2013, the GPD raised a request for fast-track Public Registry searches. The searches requested were whether Plot A and Plot B fell within a compulsory registration area and in the affirmative provide relative details, and whether there were any circumstances known to the Land Registrar that could affect any future dealings or charge on the property. According to the reply submitted by the Public Registry dated 22 February 2013, the properties were in a registration area and if the plan was used for future registration, it would be considered valid if it was in accordance with the Land Registration (Submission of Plans) Rules (Subsidiary Legislation 296.08).
- 2.6.9 On 20 February 2013, Architect E submitted reports establishing the free and unencumbered value of the property at Fekruna Bay according to Article 25(3A) of the Land Acquisition (Public Purposes) Ordinance (Chapter 88). In the report, Architect E apportioned the €5,000,000 value attributed to the entire property at Fekruna Bay to Plots A and B, as indicated on plan 83A_96. Architect E valued Plot A, measuring 952 square metres, at €3,300,000, and Plot B, measuring 491 square metres, at €1,700,000.
- 2.6.10 The expropriation process came to a conclusion on 27 February 2013, when the CoL requested the approval of the Minister MFCC, through the DG GPD, for the acquisition of the two plots of land at Fekruna Bay. Stated in the minute by the CoL was that these two plots of land were permanently required by Government in connection with public open space in terms of the provisions of the Land Acquisition (Public Purposes) Ordinance (Chapter 88). The two plots, valued as building sites at €3,300,000 and €1,700,000, respectively, were to be acquired by absolute purchase. To this end, the approval of Minister MFCC was sought prior to referral to the President for his endorsement and subsequent publication in the Government Gazette. The approval was granted by the DG GPD on 27 February 2013 and by the Minister MFCC on 28 February 2013. The President signed the declaration on 28 February 2013, and was subsequently referred by the GPD to the Department of Information for publication in the Government Gazette on the same day.
- 2.6.11 In correspondence submitted to the DG GPD by Fekruna Ltd on 28 February 2013, the Company indicated that it was willing to accept the lands at San Ġwann and Swieqi as valued by the Arbitration Committee in its report of November 2012.

- 2.6.12 In other correspondence dated 28 February 2013, the DG GPD drew the attention of the Minister MFCC to the key developments registered with regard to the proposed expropriation of the property at Fekruna Bay in exchange for government-owned land. The DG GPD indicated that the file had already been sent for the President's endorsement and the expropriation was due to be published in the Government Gazette that was to be issued on 5 March 2013, with the deed of exchange to be signed on 7 March 2013. In this context, the DG GPD expressed concern that it would be imprudent to conclude this issue with the general election imminently close. However, the DG GPD indicated that he would proceed with the expropriation if the Minister MFCC deemed the acquisition of this land for public enjoyment a priority. It was in this context that the DG GPD requested the Minister's urgent direction. Copied in this correspondence were the Minister MFEI, the Permanent Secretary MFEI and the Permanent Secretary MFCC. The Minister MFCC replied shortly thereafter, instructing the DG GPD to proceed with the expropriation and publish the relevant notice in the Government Gazette. Cited as justification for this course of action was that the case dated back several years and that the process to identify the land to be granted in exchange for the expropriated property had commenced in 2010. Moreover, the Minister MFCC stated that the delay in sourcing funds was not attributable to the DG GPD, the GPD or the MFCC, and there was an evident public purpose for this expropriation. Copied in the reply by Minister MFCC was his Head of Secretariat. In clarifications made to this Office, the Minister MFCC stated that he had also consulted the Head of Secretariat OPM on the matter, who had advised that the process was to be concluded.
- 2.6.13 Also noted in the relevant GPD file was documentation drawn up by a GPD Architect regarding the subdivision of value of the perpetual emphyteutical grant with respect to Plot B. The GPD Architect noted that the ground rent was revised according to the index of inflation every 10 years, starting from 1975, and that the last revision had taken place in 2005, with the current perpetual revisable ground rent of €1,149 per annum. Adjusting the ground rent to the present day as per the index of inflation would result in a ground rent of €1,400 per annum. Furthermore, capitalising the ground rent at five per cent resulted in a present value of the perpetual revisable directum dominium of €27,993. Since the freehold value of the site had been estimated at €1,700,000, the value of the perpetual revisable utile dominium was €1,672,007.
- 2.6.14 On 4 March 2013, two government notices for the acquisition of Plot A and Plot B were published in Government Gazette No. 19,042. The compensation offered was of €3,300,000 for Plot A and €1,700,000 for Plot B, which amounts were based on the valuations carried out by Architect E, published with the declaration. Appended to the notices were land drawings indicating Plots A and B, reproduced in Figures 2 and 3, respectively.
- 2.6.15 On 14 March 2013, the CoL provided the Department for Local Government with copies of the President's declarations that were to be posted on the notice board of the St Paul's Bay Local Council. On the same day, the CoL requested two local newspapers to publish the President's declarations relating to the expropriation of the property at Fekruna Bay.

Figure 2: Plot A at Fekruna Bay Expropriated in 2013

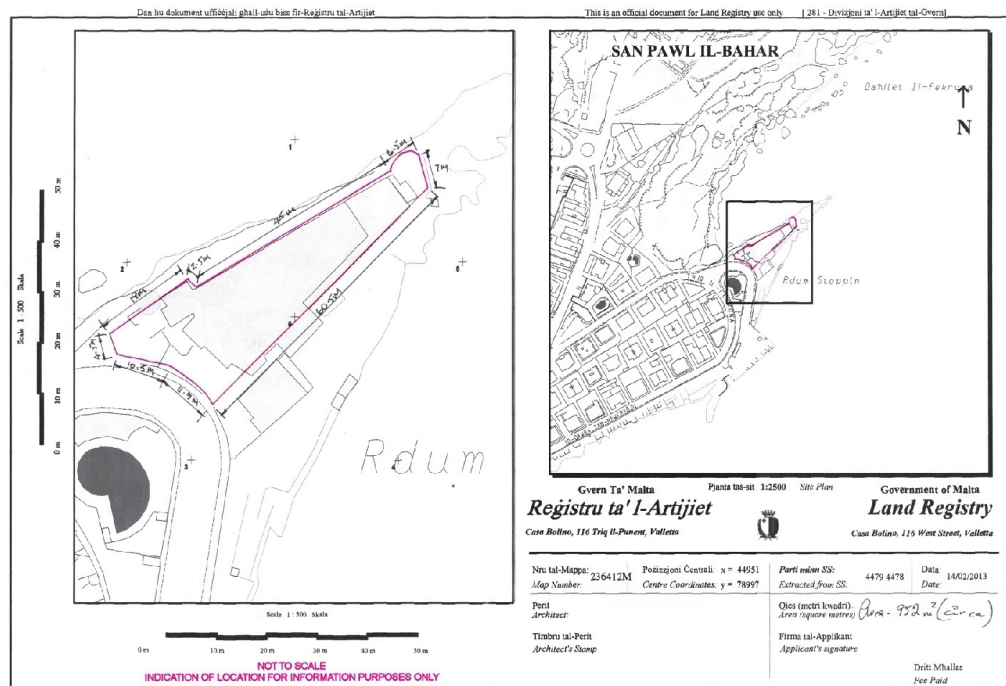
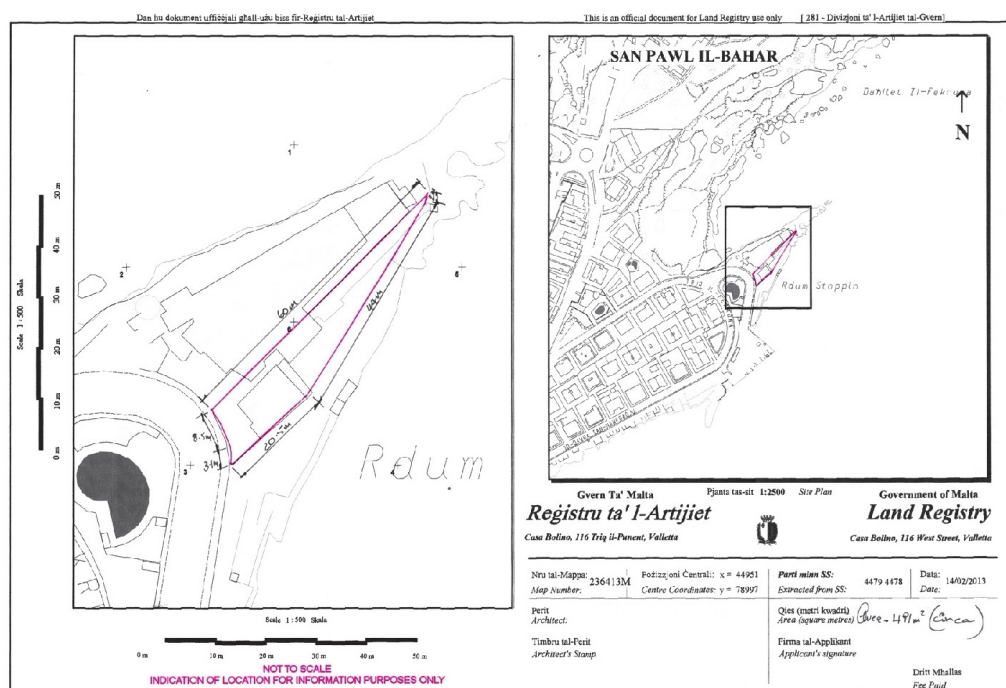


Figure 3: Plot B at Fekruna Bay Expropriated in 2013



Contract between Government and Fekruna Ltd

2.6.16 Compensation payable to Fekruna Ltd for the expropriated property at Fekruna Bay was formalised in a contract dated 5 March 2013. By virtue of this contract, Fekruna Ltd transferred to Government Plots A and B, as indicated on plan 83A_96, under title of exchange. Plot A, which was the site of the now dilapidated 'Fekruna Restaurant' and measured 952 square metres, was being transferred to Government free and unencumbered. On the other hand, Plot B, which measured 491 square metres, was subject to an annual and perpetual ground rent of €1,149, revisable every 10 years. The contract specified that Plots A and B were valued at €4,972,007. In exchange, Government transferred to Fekruna Ltd the field situated at Ta' Wied Ghollieqa, limits of San Ġwann, measuring approximately 3,012 square metres and the field in Ta' Xgħajrat, limits of Swieqi, measuring approximately 2,630 square metres. The land transferred to Fekruna Ltd was valued at €4,271,583. The contract outlined that while the plan showed that the road was aligned, such road alignment was still subject to MEPA approval. The fields granted to Fekruna Ltd were free from any ground rent; however, the contract established an annual perpetual ground rent of €300 per field, effective from the contract date, subject to the following conditions:

- a. the ground rent would increase by 10 per cent every 15 years from the contract date and could be redeemed at the revision date, capitalised at the rate of five per cent;
- b. the ground rent would be paid each year in advance with the first payment being effected on the contract date;
- c. the laudemium would be due according to law on any future transfers of any part of the lands;
- d. the ground rent would subsist when any part of the lands was transferred;
- e. the Government reserved the right to receive two legal copies of every transfer of any part of the lands above mentioned, as well as the address of the new buyer and the payment of the relative laudemium within a month from the date of transfer. A penalty of €230 would be due to Government if the laudemium was not paid, the two legal copies were not presented or the address of the new buyer not provided; and
- f. as a warranty for the payment of ground rent and the obligations entered into through the contract, Fekruna Ltd was to hypothec all of the Company's assets up to the amount of €20,000 on each of the fields, over and above the special privilege due to Government according to law.

2.6.17 General hypothecs were established for the sum of €4,271,583 on the property transferred by Government and the sum of €4,972,007 for the properties transferred by Fekruna Ltd. Indicated in the contract was the fact that Government had acquired the land at San Ġwann and Swieqi through the Church-State Agreement of 1992. On the other hand, the property transferred by Fekruna Ltd had been acquired by the Company partly from a third party and partly from Government. This property was now subject to expropriation according to the President's declaration.

- 2.6.18** The duty on documents due on the contract, to be paid equally by the parties, was €249,805, while the capital gains tax payable by Fekruna Ltd amounted to €596,641. Furthermore, stated in the contract was that Government, as authorised by Fekruna Ltd, was to pay the duty on documents and capital gains tax due by the Company as settlement of the difference in the values of the exchanged properties.
- 2.6.19** Cited in the contract was the legal basis for the exchange of properties, that is, the provisions of Article 13 of the Schedule (Article 3) of the Disposal of Government Land Act (Chapter 268). Also cited was the fact that Government was to bear fees incurred with respect to the contract. Following queries raised by the NAO, the incumbent CoL informed this Office that in cases of exchange, notarial fees incurred were split between both parties in equal shares. Notwithstanding this, in clarifications made to this Office, the Director Fekruna Ltd maintained that Government had initiated this expropriation and therefore fees incurred in this respect were to be borne by Government. Furthermore, the Director Fekruna Ltd stated that no request to contribute towards the payment of notarial fees was made by Government. Finally, aside from other standard clauses, reference was made to the obligation borne by both parties to resolve any conflicts arising with respect to the contract through arbitration. The contract was signed by the Director Fekruna Ltd and the DG GPD.
- 2.6.20** Relevant documentation reviewed by the NAO, dated 6 March 2013, indicated that the GPD had, some time earlier, requested the Ministry for Resources and Rural Affairs (MRRA) to issue a call for quotations for the demolition of the property at Fekruna Bay. To this end, on 1 March 2013, the DG Works and Services MRRA invited a number of local contractors to a site meeting in relation to the required demolition works. Two contractors attended and subsequently submitted bids. The cheaper bid was chosen and, following due authorisation, a direct contract was issued to the selected contractor at a value of €32,797, inclusive of VAT. According to correspondence dated 15 March 2013, sent to the DG GPD by the DG Works and Services MRRA, demolition works had already started.

2.7 Review by the Internal Audit and Investigations Department

- 2.7.1** On 16 July 2015, the Principal Permanent Secretary requested the IAID to review all property transfers effected in the last ten years where Article 13 of the Schedule (Article 3) of the Disposal of Government Land Act (Chapter 268) was invoked. According to Article 13, *“Government land may be given by exchange with any other land which is declared as required for a public purpose under Chapter 88 of the Laws of Malta, to the owner of the land which has been so declared. Provided that when a difference exists in the value of the two plots of land given by exchange, such difference shall be balanced with also giving an additional sum of money. So however that the exchange may not be effected if the value of the government land to be given exceeds thirty per cent of the value of the expropriated land. Any damages sustained due to the expropriation of such land shall form part of the value of the same land.”* To this end, the IAID was requested to verify whether transactions carried out in terms of Article 13 were compliant with that stipulated in the Article. This report was concluded by the IAID on 28 August 2015.

- 2.7.2 Following this analysis, the attention of the IAID was drawn to the expropriation of the property at Fekruna Bay, which was carried out in terms of Article 13. Although the IAID did not discuss the transaction in terms of it being in breach of this Article, the IAID established that an overpayment of €21,119 had been made by Government in favour of Fekruna Ltd. In the contract dated 5 March 2013, Government had expropriated property from Fekruna Ltd valued at €4,972,007, and in exchange transferred government-owned land valued at €4,271,583. The difference, amounting to €700,424, in favour of Fekruna Ltd, was offset against amounts due to Government by the Company in lieu of capital gains tax and duty on documents. The capital gains tax due by the Company amounted to €596,641, that is, 12 per cent of €4,972,007, while the duty on documents due was €124,903, equivalent to 50 per cent of €249,805. Therefore, the total tax and duty due, amounting to €721,544 exceeded the difference due to Fekruna Ltd by €21,119, resulting in an overpayment by Government in favour of Fekruna Ltd. The IAID raised queries with Minister MFCC regarding this overpayment. The Minister MFCC indicated that he was unaware of this overpayment as a Minister would not delve into workings of balances due; however, added that this should not have been the case and the official who had carried out such workings was to be held to account.
- 2.7.3 Subsequent to the 28 August 2015 report, the IAID was requested to undertake another review by the Principal Permanent Secretary on 1 September 2015. This second review was to focus on four property exchanges identified in the 28 August 2015 report, one of which related to the expropriation of the property at Fekruna Bay. The IAID engaged the services of an advisory firm, hereinafter referred to as the IAID Consultants, to carry out an independent valuation of the three sites involved in the exchange between Government and Fekruna Ltd. The IAID concluded this report on 1 October 2015.
- 2.7.4 The IAID noted that the process whereby the two plots at Fekruna Bay (referred to as Plot A and Plot B in paragraph 2.6.8) were expropriated was anomalous, in that it was not executed in the usual manner. In other expropriations reviewed, the process was instigated when a ministry or government department made a formal request to the GPD to expropriate a particular site required for a public purpose. Subsequently, the GPD would obtain a valuation of the indicated site and publish the notice of expropriation on the Government Gazette through a President's Declaration. At this stage, the GPD would not be required to establish ownership of the expropriated site. Eventually, the owner would contact the GPD and once the title of ownership is proven and the amount of compensation, as established by the GPD and published in the notice of expropriation, is agreed to, the owner can either accept a cash consideration, an exchange with other government-owned land of his choice or a combination of both. In case of disagreement with the amount of compensation due, the matter would be referred to the LAB.
- 2.7.5 According to the IAID report, in the expropriation process of the two plots at Fekruna Bay, the DG GPD had, on 20 January 2010, informed Fekruna Ltd, as the owner, that Government was considering the acquisition of the property for a public purpose. The DG GPD had

further indicated that, without prejudice to the provisions of the Land Acquisition (Public Purposes) Ordinance (Chapter 88), the GPD was seeking to arrive at an amicable settlement in this regard. To this end, a committee was set up to carry out negotiations. In addition to proof of ownership, Fekruna Ltd was requested to submit a valuation of the property to be expropriated. Subsequently, on 6 February 2010, Fekruna Ltd stated that it was willing to arrive at an agreement instead of expropriation and indicated that the Company would consider an exchange with other government-owned land. Fekruna Ltd also submitted its valuation of the property.

- 2.7.6 When asked why the GPD did not adhere to the usual procedure in the expropriation of the property at Fekruna Bay, the Minister MFEI stated that the return of environmentally sensitive areas to their original state served a public interest and had been an electoral pledge. According to that stated by the Minister MFEI, since this measure would create pressure on public finances, Government decided to circumvent this difficulty through the exchange of land as this would bear no impact on public finances. The Minister MFEI claimed that this necessitated that such arrangements be made through amicable negotiations, as failure to reach agreement on the land to be exchanged would have given rise to the risk of an appeal being lodged for cash compensation with the LAB, with Government possibly obligated to pay a higher price. Furthermore, the Minister MFEI stated that the most important aspect was that the process was transparent rather than who initiated the expropriation process. In this context, the Minister MFEI made reference to the independent board that was set up to review the valuations of properties exchanged.
- 2.7.7 According to the IAID report, the Minister MFCC reiterated that stated by the Minister MFEI, that Government wanted to pre-empt a situation where referral would have been made to the LAB. Moreover, the Minister MFCC maintained that the provisions of the applicable legislation had not been breached and that there was no political involvement in the process. With respect to Government's decision to negotiate through the PEC, rather than expropriate outright, the Minister MFCC sought to justify this course of action in view of the considerable value of the properties and indicated that he had been informed of the substantial divergence in terms of value between the parties. Although the Minister MFCC acknowledged that agreement was not an inevitable certainty, were agreement to be reached, this would imply that compensation paid was in full and final settlement, hence precluding the possible revision of compensation through legal action.
- 2.7.8 Furthermore, the IAID questioned whether the principle of sound financial management was adhered to in this expropriation process, particularly in view of the fact that the contract was signed a few days prior to the general election. To this end, the Minister MFCC stated that it would have been irresponsible not to conclude the exchange prior to the election as this was in line with that stated in the electoral manifesto. Furthermore, the Minister MFCC argued that the process had commenced significantly prior to his term in office. Moreover, the Minister MFCC maintained that the subsequent Administration had continued with the embellishment process of the land at Fekruna Bay when it was in a position to rescind the contract had it deemed such action necessary. Finally, the Minister

MFCC declared that he did not have any conflict of interest nor had he met the third party involved in this case. Similarly, the Minister MFEI argued that, once concluded, there was no reason to refrain from executing the expropriation of a property, the process relating to which had commenced in 2010. The Minister MFEI indicated that there were no legal provisions limiting government powers following the announcement of a general election and therefore the issue was not one of sound financial management but of fairness. In conclusion, the Minister MFEI stated that he was not involved in the process as he was no longer the minister responsible.

2.7.9 One final aspect commented on by the IAID in its report dated 1 October 2015 related to the value of the exchanged properties. The IAID based its review on a report dated 24 September 2015, drawn up by the IAID Consultants. The scope of this report entailed the estimation of the market value of the properties exchanged, based on an assessment of the existing uses and permissible development opportunities of the properties. The IAID Consultants based their estimation of the market value on the highest and best use for each property, primarily through the application of the Residual Land Valuation Approach. In determining the highest and best use, the following considerations were taken into account, that the use was:

- a. possible with regard to what would be considered reasonable by market participants;
- b. legally permissible and that any legal restrictions on the use of the site (for instance, zoning designations) were taken into account; and
- c. financially feasible and took into account whether an alternative use that was physically possible and legally permissible would generate sufficient return to a typical market participant, after taking into account the costs of conversion to that use, over and above the return on the existing use.

2.7.10 The Residual Land Valuation Approach estimates the current value of a property held for development by reference to its Expected Sales Value on completion, less the estimated development costs that would be incurred to achieve that value. The IAID Consultants also noted that the Expected Sales Value of the development on completion was established primarily by reference to comparable properties that were either sold in the recent past or were currently being advertised for sale. In applying this approach, the IAID Consultants noted that adjustments were made for factors such as the specific characteristics of the property under appraisal and the expected differences between advertised and transacted prices.

2.7.11 Cited in the IAID Consultants report was the fact that the valuations were prepared on current prices at the time of writing and thereafter re-based to 31 December 2012 using the movement in the Property Prices Index published by the Central Bank of Malta, specifically applying a factor of 0.877. Of note was the disclaimer cited by the IAID Consultants that, in many cases, valuation work is subjective and dependent on the exercise of individual judgement. Therefore, the IAID Consultants indicated that there was no indisputable single value and that the IAID Consultants ordinarily expressed valuations as falling within

expected ranges. Nonetheless, at the IAID's request, the IAID Consultants had determined single figure valuation estimates that were reasonable and defensible, although it was acknowledged that arguments for different values could be made.

2.7.12 The gross value of the properties, as determined by the IAID Consultants, are indicated in Table 6. The IAID Consultants took into account the site-specific considerations in estimating the value of the properties exchanged, utilising the Residual Value Approach in each instance. These are presented hereunder.

Table 6: Gross Value of Properties as determined by the IAID Consultants

Property/Site	Area (m ²)	Valuation (€)
Fekruna Bay, St. Paul's Bay	1,443	4,097,000
San Ġwann	3,012	2,310,000
Swieqi	2,630	2,214,000

2.7.13 In the valuation of the property at Fekruna Bay, the IAID Consultants made reference to the MEPA policies applicable to the site. The policies referred to were the NWLP, Map 43 - Xemxija Policy Map, Map 44 - Xemxija Building Heights, the Development Control: Policy and Design Guidance 2007 and the NWSP 24. The history of planning applications and enforcement carried out by MEPA presented in the IAID Consultants report ranged from 1989 to 2010, with 2014 developments indicating the site's eventual upgrading and the granting of access to the public. Bearing in mind the applicable MEPA policies, the IAID Consultants established the total existing approved built floor space for the site. The approved existing drawing submitted in PA0904/09 were utilised by the IAID Consultants in determining the permissible floor space covered by the commercial premises. In this respect, the approved internal floor space measured 1,362 square metres. Cognisant of the applicable parameters regulating the site, the IAID Consultants sought to establish value by simulating a mixed-use development spread over three levels (ground floor, basement level -1 and basement level -2). The proposed use was for:

- a. two high-end residential units, with a combined area of 454 square metres (one-third of the allowable total floor area); and
- b. commercial uses (Class 6, Class 9 and Class 4 uses as per Use Classes Order, 1994) spread over the remaining allowable area.

2.7.14 The assumed sales price for the residential units was based on the IAID Consultants' experience of current market prices for luxurious and exclusive residential units located in very close proximity to the shore. The assumed sales price for the commercial units within the development was based on the IAID Consultants' experience of current market rental rates for food and beverage and leisure outlets. The IAID Consultants estimated the current market value of the two adjacent plots of land at Fekruna Bay to be in the region of €4,673,000. Rebasing the current market value to 31 December 2012 resulted in a valuation in the region of €4,097,000, as illustrated in Table 6.

2.7.15 The valuation of the San Ġwann site by the IAID Consultants was based on the applicable planning policies, namely, the NHLP, Map SG2 - San Ġwann East Policy Map, Map SG4 - San Ġwann East Building Heights and Urban Design, the Development Control: Policy and Design Guidance 2007 and the Residential Priority Area NHHO02. The IAID Consultants valued the land using the Residual Approach, based on assumptions that the site would be developed into 12 semi-detached villas with a plot area of approximately 100 square metres each and a gross internal area of 200 square metres. An additional assumption was that the development would include a communal underground car park at basement level. The plots were primarily valued by reference to the advertised price of properties with comparable characteristics, that is, detached and semi-detached villas with a gross internal area of between 150 and 250 square metres and located in the neighbouring area, including San Ġwann and Kappara. According to the IAID Consultants, the market value of this plot of land at the time of reporting, September 2015, was €2,635,000. The IAID Consultants rebased the market value to 31 December 2012, resulting in a revised valuation of €2,310,000.

2.7.16 In the valuation of the land at Swieqi, the IAID Consultants made reference to the NHLP, Map SW2 - Swieqi South Ta' I-Ibraġġ and St Andrews Policy Map, Map SW4 - Swieqi South (Ta' I-Ibraġġ and St Andrews) Building Heights and Urban Design, the Development Control: Policy and Design Guidance 2007 and the Residential Priority Area NHHO02. The basis of the valuation of the Swieqi land undertaken by the IAID Consultant was the Residual Approach. The valuation was based on the assumption that the existing site would be developed into four semi-detached villas, each with a plot area of approximately 650 square metres and a gross internal area (excluding basements) of approximately 300 square metres. The IAID Consultants based their valuation on current advertised prices for detached and semi-detached villas with a plot area of between 350 and 850 square metres, located in the neighbouring area of Ibraġġ, Swieqi and Madliena. To this end, the IAID Consultants selected properties bearing comparable characteristics. Adjustments were made to prices of advertised properties in Madliena due to the premium attributed to property in this area. The IAID Consultants estimated the market value of the land at Swieqi at the time of reporting, September 2015, to be in the region of €2,526,000. However, the rebasing of this market value to 31 December 2012 resulted in a valuation in the region of €2,214,000.

2.7.17 The IAID subsequently compared the valuations established by the IAID Consultants with those cited in the contract dated 5 March 2013 between Government and Fekruna Ltd. A marked difference was noted in all valuations, which when aggregated, resulted in a net difference against public funds amounting to €1,127,424 (Table 7 refers).

Table 7: Comparison of the Property Values cited in IAID report and Contract of Exchange

Property/Site	IAID report values (€)	Contract of exchange values (€)	Difference (€)	Impact on public funds
Fekruna Bay, St Paul's Bay	4,097,000	4,972,007	(875,007)	against
San Ġwann	2,310,000	2,465,000	155,000	in favour
Swieqi	2,214,000	1,806,583	(407,417)	against
Overall Impact			(1,127,424)	against

2.7.18 In the case of the property at Fekruna Bay, the IAID Consultants estimated the value as at 31 December 2012 as €4,097,000, resulting in a negative impact on public funds of €875,007 when compared to the value agreed in the contract of exchange between Government and Fekruna Ltd. Of similar negative impact on public funds was the value assigned to the land at Swieqi, valued at €2,214,000 by the IAID Consultants, yet estimated at €1,806,583 in the contract of exchange. This resulted in a net variance against public funds of €407,417. On the other hand, valued at €2,310,000 by the IAID Consultants, the land at San Ġwann was €155,000 less than the value cited in the contract of exchange, effectively representing a difference in favour of public funds. Therefore, in aggregate terms, the valuations by the IAID Consultants indicated an overall negative impact of €1,127,424 on public funds, when seen in light of values cited in the contract of exchange between Government and Fekruna Ltd.

2.7.19 In conclusion, the IAID drew attention to the fact that Fekruna Ltd was given the opportunity to not only value the Company property subject to expropriation, but also the two plots of government-owned land transferred to the Company in exchange. In this respect, the IAID recommended that the GPD revise the manner by which property valuations are carried out and the negotiation process relating to the said valuations, in order to better safeguard public funds.

Chapter 3

Conclusions

3.1 The Facts of the Case

3.1.1 In 2013, the GPD expropriated property at Fekruna Bay, valued at €4,972,007. In exchange, government land situated in San Ġwann and Swieqi, comprehensively valued at €4,271,583 was transferred to Fekruna Ltd. The difference, amounting to €700,424, in favour of Fekruna Ltd, was offset against amounts due to Government by the Company in lieu of capital gains tax and duty on documents. Hereunder is a timeline of key events relating to the Fekruna Bay expropriation (Table 8 refers).

Table 8: Timeline of Key Events

Date	Description
9 October 1987	Contract of donation and sale of the Fekruna Bay property and surrounding foreshore between a third party and Fekruna Ltd.
22 March 1995	Minister for the Environment requested the CoL to take the necessary action, including expropriation if required, to ensure the public's right of access to Fekruna Bay, following concerns raised by residents.
12 July 1996	The President's declaration for the expropriation of the foreshore at Fekruna Bay was published in the Government Gazette.
24 July 1996	Fekruna Ltd filed an application in the Constitutional Court against the CoL, citing that the expropriation breached their fundamental human rights.
4 June 1997	The Constitutional Court declared the President's declaration as null and ordered the CoL to pay Lm1,500 (€3,494).
24 May 2004	Following an appeal filed by the GPD, the Court of Appeal decided in favour of Government, revoking the former decision.
14 April 2005	In determining the compensation due for the expropriated land, Architect A estimated the value of the foreshore at Lm475,000 (€1,106,452).
3 May 2006	Architects B and C jointly valued the expropriated foreshore at Lm400,000 (€931,749).
30 May 2007	A contract of sale was entered into between Government and Fekruna Ltd, whereby Government acquired land measuring 1,347 square metres, against payment of Lm375,309 (€874,235) and an additional sum of Lm128,709 (€299,811), representing interest due, as per the President's Declaration dated 12 July 1996.

31 January 2008	Government acquired the perpetual sub directum dominium of a plot of land constituting part of the foreshore, yet not included in the contract between Government and Fekruna Ltd, for Lm24,690 (€57,513), following the publication of the relevant President's declaration.
7 February 2009	The DG GPD requested an Adviser PS Revenues and Land, an architect by profession, to draw up a valuation of the property at Fekruna Bay. This course of action ensued coordination between the OPM and MEPA as to whether further development was to be sanctioned or Government was to acquire the site.
12 March 2009	The Adviser PS Revenues and Land submitted a valuation of the site, estimated at €3,600,000.
10 December 2009	The DG GPD informed the PS Revenues and Land that, following internal discussions, a PEC was to be set up. The PEC was to negotiate the purchase value of properties to be acquired by Government and establish procedure with respect to valuation. This was duly approved by the PS Revenues and Land.
16 December 2009 & 23 December 2009	The PEC held meetings wherein the possible acquisition of the Fekruna Bay property was discussed. The valuation drawn up by the Adviser PS Revenues and Land was presented to the PEC.
20 January 2010	The DG GPD informed Fekruna Ltd that Government was considering the acquisition of property belonging to the Company at Fekruna Bay since it was required for a public purpose. In addition, the DG GPD indicated that Government was seeking an amicable agreement and requested the Company to submit a valuation.
6 February 2010	In its reply, Fekruna Ltd stated that it was willing to negotiate and reach agreement regarding its property at Fekruna Bay. The Company submitted a valuation amounting to €6,750,000 and indicated its willingness to exchange this property with other government-owned lands or accept part exchange and part compensation.
9 June 2010	An updated valuation was presented by Fekruna Ltd following a meeting held with the PEC. Fekruna Ltd estimated the value of the property between €6,750,000 and €7,500,000.
18 June 2010	Following review of the revised valuation submitted by Fekruna Ltd, the Adviser PS Revenues and Land estimated the value of the Fekruna Bay property at €5,000,000.
28 June 2010	The PEC agreed that another valuation from an independent architect, Architect D, was to be obtained.
10 July 2010	Architect D estimated the value of the property at Fekruna Bay at €5,000,000.
13 July 2010	The PEC requested another architect, Architect E, to provide a valuation of the property at Fekruna Bay.
27 July 2010	Architect E valued the property at Fekruna Bay at €5,100,000.
3 August 2010	The Secretary PEC informed the Minister MFEI, through PS Revenues and Land, that the PEC had requested valuations from three architects, who had all independently valued the property at €5,000,000. Authorisation to proceed with negotiations was requested.
8 October 2010	The Minister MFEI and the PS Revenues and Land authorised the request by the PEC.

undated	Government-owned lands in San Ġwann, San Pawl tat-Tarġa and Swieqi were identified for possible exchange with the Fekruna Bay property.
21 January 2012	Architect D estimated the freehold value of the San Ġwann site at €2,635,000.
23 January 2012	Architect D estimated the freehold value of the Swieqi site at €2,500,000.
18 April 2012	A meeting was held between the DG GPD and the Director Fekruna Ltd, wherein the issue of payment of capital gains tax was raised. Aside from the presented facts, the NAO could not ascertain developments that took place after ministerial authorisation obtained in October 2010 as no documentation was provided.
undated	An office note in the GPD file indicated that the Director Fekruna Ltd deemed the valuations of the San Ġwann and Swieqi sites as too high. In view of this disagreement, the DG GPD proposed that a committee was to be set up in order to arrive at an acceptable value, with specific reference to arbitration.
26 October 2012	In a meeting of the Arbitration Committee, the divergent values of the San Ġwann and Swieqi sites were discussed, yet agreement in this respect was not reached.
20 November 2012	In correspondence submitted to the Secretary of the Committee, the Chair Arbitration Committee presented a summary of the divergent valuations put forward by Government and Fekruna Ltd. The Chair Arbitration Committee proposed tentative valuations of €2,630,000 and €1,600,000 for the San Ġwann and Swieqi sites, respectively. In addition, a consideration of €60,000 was proposed with respect to road formation, resulting in a comprehensive value of €4,290,000.
24 November 2012	Fekruna Ltd objected to the values proposed by the Chair Arbitration Committee. The Company proposed that the San Ġwann site be valued at €2,465,000 and that the Swieqi site be extended by 0.34 of a tumolo, which resulted in a revised valuation of €1,804,000. In addition, the road formation consideration was revised to €31,000, resulting in a comprehensive value of €4,300,000.
November 2012	The Arbitration Committee submitted its valuation report for the San Ġwann and Swieqi sites to the DG GPD. In sum, the San Ġwann site was valued at €2,465,000, while that at Swieqi was valued at €1,806,583, resulting in an aggregate value of €4,271,583.
27 December 2012	The DG GPD referred the Arbitration Committee report to the Minister MFCC. Ministerial authorisation was specifically requested for: the GPD to obtain a written request from the competent Ministry to expropriate the property at Fekruna Bay; the exchange of the San Ġwann and Swieqi sites; and the lodgement of a request to the MFEI for €725,000, being the remaining balance of compensation due to Fekruna Ltd, which would in turn be immediately paid to the CIR in respect of capital gains tax and duty on documents.
28 December 2012	The Minister MFCC granted his approval.
11 January 2013	The DG GPD submitted correspondence to the Minister MTCE, indicating that a formal request was to be made for the expropriation of the property at Fekruna Bay.
16 January 2013	The letter dated 11 January 2013 was acknowledged by the Private Secretary to Minister MTCE; however, no formal request by the Minister MTCE was made.

27 February 2013	The CoL, through the DG GPD, requested the approval of the Minister MFCC for the acquisition of the property at Fekruna Bay. The property, valued at €5,000,000, was to be acquired by absolute purchase. To this end, the authorisation of Minister MFCC was sought prior to referral to the President for endorsement and subsequent publication in the Government Gazette.
27 February 2013	The DG GPD granted approval.
28 February 2013	The Minister MFCC granted approval.
28 February 2013	The President signed the declaration, whereby the expropriation of the property at Fekruna Bay was authorised.
28 February 2013	Fekruna Ltd informed the DG GPD that the Company was willing to accept the sites at San Ġwann and Swieqi as valued by the Arbitration Committee.
28 February 2013	In correspondence addressed to the Minister MFCC, the DG GPD expressed concern that it would be imprudent to conclude this expropriation given the proximity of the general election.
28 February 2013	The Minister MFCC instructed the DG GPD to proceed with the expropriation, citing the fact that this case dated back several years and that the process to identify the lands that were to be exchanged had commenced in 2010. Moreover, the Minister MFCC indicated that the delay in sourcing funds was not attributable to the GPD or the MFCC and that there was an evident public purpose for this expropriation.
4 March 2013	The President's declaration, whereby Government expropriated the property at Fekruna Bay, was published in the Government Gazette.
5 March 2013	A contract of exchange was entered into between Government and Fekruna Ltd, by means of which Government acquired the property at Fekruna Bay valued at €4,972,007 and transferred land in San Ġwann and Swieqi, comprehensively valued at €4,271,583 to the Company. The difference, amounting to €700,424, in favour of Fekruna Ltd, was offset against amounts due to Government by the Company in lieu of capital gains tax and duty on documents.
15 March 2013	Works for the demolition of the property at Fekruna Bay commenced.

3.2 Conclusions

3.2.1 The fundamental requirement for an expropriation is that the land acquired by Government is to serve a public purpose. In the case of the expropriation of the Fekruna Bay property, the public purpose that was to be served was intrinsically tied to Government's efforts to acquire land outside development boundaries so as to be returned to its original state, to ensure better public access and preserve it for future generations. Other sites of interest to Government in this regard had been identified by the OPM and MEPA, although negotiations for their acquisition had stalled for various reasons beyond Government's control or due to budgetary constraints. In this Office's opinion, the expropriation of the Fekruna Bay property, although within development boundaries, served the intended public purpose of returning the site to its original state and granting the public better accessibility.

- 3.2.2 Negotiations that were to lead to the acquisition of the Fekruna Bay property were undertaken by the PEC, a Committee set up in December 2009 to establish the value of properties to be acquired by Government and procedures of valuation. The NAO considers the setting up of this Committee as a positive development, shifting negotiations with owners of properties to be acquired from individual officials at the GPD to a committee. This ensured greater transparency and provided additional safeguards to the integrity of the negotiating process. The PEC retained adequate records of its meetings allowing the NAO to verify key developments, thereby ensuring greater accountability.
- 3.2.3 The NAO noted that the procedures adopted by the PEC with respect to the expropriation of the Fekruna Bay property differed from the standard procedure adopted by the GPD, an inevitable outcome arising from the context within which the Committee was expected to operate. Ordinarily, the process leading to an expropriation is initiated following a request by a Ministry to the GPD. The value of the property to be expropriated is established by the GPD, the relevant President's declaration is published and funds are deposited in a specific account. It is at this stage that the owner of the expropriated property would claim ownership and the right to compensation. In this case, negotiations were to be undertaken by the PEC with the Director Fekruna Ltd in an attempt to reach an amicable agreement. While this procedure was deemed somewhat anomalous in terms of that ordinarily adopted, the NAO established that this was not in breach of statutory provisions, which do not stipulate procedural requirements.
- 3.2.4 In the NAO's opinion, the PEC was constrained by the significant budgetary limitations within which it was operating, which prohibited cash settlement. In this context, resort to an amicable agreement was an inevitable course of action that conditioned the PEC to adopt an approach that was different to that ordinarily taken. The Minister MFEI, the Minister MFCC and the various GPD officials involved argued that the advantages envisaged with regard to an amicable settlement related to the avoidance of referral to the LAB, risking higher compensation to be paid by Government and the negative connotations associated with expropriation, as well as the increased possibility of agreement being reached that compensation be effected through land exchange. In this Office's understanding, it is the latter point that necessitated the PEC to resort to an amicable settlement, as the exchange of government-owned lands as compensation circumvented imposed budgetary constraints.
- 3.2.5 The Office established that the Fekruna Bay property was within development boundaries but was not included within a specific zone until July 2006, when MEPA determined the site as developable in terms of a specific policy. Although the existing site footprint and building height limitations were retained, the use of the site was widened to encompass residential as well as commercial use. In the NAO's understanding, this classification resulted in an accretion of the property value. Developments subsequently noted in 2007, wherein the possible expropriation of the Fekruna Bay property was brought up by MEPA, were deemed incongruent with the classification of the property as a developable site, for the Authority had allowed for the redevelopment of the site one year prior. This incongruence was considered as a shortcoming in terms of good governance.

- 3.2.6 Tasked with the valuation of the Fekruna Bay property, the PEC sought three valuations. The NAO considered the Committee's efforts in obtaining multiple valuations as a positive measure. Notwithstanding this, the anticipated benefit of sourcing multiple valuations was somewhat mitigated by the fact that valuations already compiled were made available to the architects engaged in this respect. Nevertheless, the architects involved maintained that valuations were carried out in an independent manner and access to other valuations merely allowed for the verification of assumptions made and conclusions reached. When the NAO considers that the valuations were of €5,000,000, €5,000,000 and €5,100,000, an element of scepticism persists. This Office is of the opinion that an element of objectivity could have been ensured had the GPD not provided the architects engaged with the valuations already compiled on behalf of Government.
- 3.2.7 Ministerial authorisation to proceed with negotiations for the acquisition of the Fekruna Bay property for €5,000,000 and commence procedures for the identification of government-owned land of equivalent value that could be exchanged was granted to the PEC in October 2010. Based on documentation reviewed, the NAO established that the PEC was not reconvened following ministerial authorisation, with the process now effectively driven by the DG GPD. The NAO considered the documentation made available with respect to the period October 2010 and January 2012 as providing scant details of developments registered. In effect, following ministerial authorisation in October 2010, the next development recorded on file were the valuations submitted with respect to the San Ġwann and Swieqi sites in January 2012. This Office noted that no records of meetings held between the DG GPD and the Director Fekruna Ltd were retained on file. Although documentation relating to enquiries made by the Director Fekruna Ltd with the DG GPD were subsequently provided to the NAO by the latter, these submissions were not comprehensive with no record of key developments, such as the communication of the €5,000,000 valuation to the Director Fekruna Ltd, provided. Similarly, no record was retained of the process that led to the identification of government-owned lands for possible exchange. Although the Director Fekruna Ltd was informed of these sites, and possibly others, no documentation of this process was on file. It is in this context that the NAO considers the lack of documentation as a serious shortcoming, effectively impeding the Office from establishing key developments, detracting from the principles of good governance, accountability and transparency.
- 3.2.8 Similar concerns were noted by the NAO following the submission of valuations of the government-owned lands proposed for exchange. Although no records of negotiations were retained, no minutes of meetings kept and no documentation of correspondence exchanged made available, the NAO established that Fekruna Ltd was in disagreement with the valuations of the San Ġwann and Swieqi sites. This Office deemed the absence of any record detailing developments at this stage of the process as a serious concern, bearing an adverse impact on the overall level of governance, accountability and transparency of Government negotiations.

- 3.2.9** In view of the disagreement between the parties, the DG GPD proposed resolution through arbitration, a process that was to be undertaken by an ad hoc committee, the Arbitration Committee. The NAO was informed that arbitration was a practice resorted to by the GPD when seeking to determine a realistic and just value of the property in order to reach an amicable settlement. Despite serious reservations in this respect, the NAO acknowledges that arbitration provided a pragmatic course of action to address the disagreement on property values, particularly in view of the indicated budgetary constraints. Through this method, the GPD maintained control over the arbitration process and ensured resolution within the intended timeframe.
- 3.2.10** Notwithstanding this, the NAO noted that the GPD did not have a set procedure for the appointment of such committees. Without shedding doubt on the competence of the Chair Arbitration Committee, in this case, the Chair was nominated based on his acquaintance with the DG GPD. The NAO contends that a more formal process of setting up committees and selecting members representing Government was required. This would have ensured a more transparent and equitable process of arbitration.
- 3.2.11** Although the Arbitration Committee was tasked with reaching agreement on the valuation of the properties to be exchanged, the NAO noted that no formal terms of reference were set. In this Office's opinion, clear terms of reference would have provided the Committee with a more definite and concrete delineation of its responsibilities. In this absence, the Chair Arbitration Committee understood his role as a mediator between the other members of the Committee, that is, architects representing Government and Fekruna Ltd. This was rendered evident in the determination of the value of the San Ġwann site by the Arbitration Committee, where the mean value of the two valuations was deemed as a solution to reach agreement despite the fact that the Chair acknowledged that he was more inclined to agree with the valuation compiled by the architect representing Government.
- 3.2.12** Documentation reviewed by the NAO made reference to several meetings held by the Arbitration Committee; however, this Office was only presented with correspondence rendering evident two meetings held. While the correspondence reviewed and the arbitration report provided a sufficient level of detail to allow for the understanding of key developments and the agreement arrived at on the valuations, the gaps in documentation hindered the NAO from establishing a comprehensive account of the entire process of arbitration.
- 3.2.13** While the aforementioned shortcomings relate to the manner in which the arbitration process was executed, the NAO maintains serious reservations regarding the principle to resort to arbitration in determining the value of government-owned land that was to be exchanged. While Article 13(1) of the Land Acquisition (Public Purposes) Ordinance (Chapter 88)¹⁶ allows agreement to be reached between the CoL and the owner of the expropriated

¹⁶ Article 13(1) of the Land Acquisition (Public Purposes) Ordinance (Chapter 88) states, 'The amount of compensation to be paid for any land required by a competent authority may be determined at any time by agreement between the competent authority and the owner, saving the provisions contained in subarticle (2).'

property, no similar reference is made to the valuation of government-owned lands subject to exchange. The only provision regulating the exchange of government land is Article 13 of the Schedule (Article 3) of the Disposal of Government Land Act (Chapter 268),¹⁷ which does not address this matter. Although applicable legislation does not specify whether or not it is permissible for owners of expropriated property to be involved in establishing the value of government-owned land to be exchanged by way of compensation, the NAO maintains significant reservations in this respect. In this Office's opinion, arbitration, if any, was to be resorted to in the establishment of value of the Fekruna Bay property, as regulated by Article 13(1) of the Land Acquisition (Public Purposes) Ordinance, and not in the case of the San Ġwann and Swieqi sites. Negotiations on the value of government-owned land present an added and unwarranted risk to Government. As the value of the government-owned land to be exchanged is inevitably negotiated downwards by the owner of the expropriated land, the real disbursement incurred by Government, albeit not in cash, increases. This risk materialises in cases such as this, where Government indicated that cash settlement was not an option yet intended to proceed with the expropriation regardless.

3.2.14 Following agreement on the value of lands to be exchanged as compensation for the expropriation of the Fekruna Bay property, and the approval by the Minister MFCC, the DG GPD sought to obtain a written request for the expropriation of the site by the competent ministry, in this case, the Minister MTCE. Although this request was acknowledged, the Minister MTCE did not submit a formal request for the expropriation of the site. The Minister MFCC and the DG GPD maintained that the submission of a request by the competent minister was an established practice and not a legal requirement, which explanation was deemed reasonable by the NAO. Notwithstanding this, the NAO is of the opinion that a formal request for expropriation was essential in terms of due process, irrespective of whether this was made by the MTCE, the MFCC or the OPM.

3.2.15 Another issue of note identified by the NAO was the point raised by the DG GPD in correspondence submitted to the Minister MFCC, wherein doubt was expressed as to whether it was prudent to conclude the expropriation in view of the then imminent general election. The Minister MFCC contended that the process was to be seen through, maintaining that it had been initiated several years earlier and served a clear public purpose. In its consideration of the matter, the NAO recognised the fact that there is no legal stipulation of what functions of government come to a halt, and when, once an election is announced. This Office acknowledges the validity of arguments supporting the exercise of prudence under such circumstances; however, similarly deems valid the drive to conclude a process that had been long outstanding. In view of the regulatory lacuna, the matter remains highly subjective.

¹⁷ Article 13 of the Schedule (Article 3) of the Disposal of Government Land Act (Chapter 268) states, "Government land may be given by exchange with any other land which is declared as required for a public purpose under Chapter 88 of the Laws of Malta, to the owner of the land which has been so declared. Provided that when a difference exists in the value of the two plots of land given by exchange, such difference shall be balanced with also giving an additional sum of money. So however that the exchange may not be effected if the value of the government land to be given exceeds thirty per cent of the value of the expropriated land. Any damages sustained due to the expropriation of such land shall form part of the value of the same land."

- 3.2.16** The contract was concluded on 5 March 2013, by virtue of which the site at Fekruna Bay was transferred to Government for €4,972,007, while land at San Ġwann and Swieqi, valued at €4,271,583, was provided in exchange to Fekruna Ltd. The difference, amounting to €700,424, in favour of Fekruna Ltd, was offset against amounts due to Government by the Company in lieu of capital gains tax and duty on documents. The total tax and duty due, amounting to €721,544 exceeded the difference due to Fekruna Ltd by €21,119, resulting in an overpayment by Government in favour of Fekruna Ltd. This overpayment was in fact identified by the IAID in its review of the contract. The NAO is of the opinion that Government should recoup the amount overpaid.
- 3.2.17** When comparisons are drawn between the valuations of the lands exchanged as established by the IAID Consultants and those cited in the contract, the variance of €1,127,424, adverse to Government, is substantial. Part of this variance can be attributed to the subjectivity inherent in the valuation of property, rendered evident by the fact that the valuations of the Fekruna Bay property and the San Ġwann site made reference to the same policies regulating development and use. Notwithstanding this, in the case of the Fekruna Bay property, where the shortfall to Government amounted to €875,007, the NAO is of the opinion that the subjectivity of the valuations of this property could have been mitigated had the GPD not provided the architects engaged with the valuations already obtained. While it may be reasoned that the variance in the value of the Swieqi site, amounting to €407,417, was partly attributable to the subjectivity of valuations, another factor accounting for the variance was the applicable development policies, a matter that is objective and verifiable. Although divergent views on whether the site at Swieqi was exclusively a fully detached zone or allowed for semi-detached villas, the Arbitration Committee ultimately considered the former. The NAO noted that the IAID Consultants valued the site as a semi-detached villa zone, allowing for the maximisation of revenue by Government. Having verified the accuracy of the understanding presented by the IAID, the NAO is of the opinion that revenue to Government could have been maximised through the application of policies that safeguarded Government's interests.
- 3.2.18** In seeking to determine whether value for money to Government was ascertained, the NAO considered diverse aspects of the transaction. An essential element in this respect is the public purpose that was to be served through this expropriation, that is, to return the site for the use and benefit of the public. Establishing the value of this benefit, positive in terms of use by the public, is beyond the scope of this audit; however, it is the magnitude of this benefit, as compared to the €5,000,000 outlay by Government, that would determine whether value for money was attained, or otherwise. Another integral aspect in the consideration of value for money was the values assigned to the properties exchanged.

Concerns emerge when one considers the adverse overall impact on public funds of €1,127,424, equivalent to 22.5 per cent of the €5,000,000 transaction. This adverse impact may partly be attributed to the failure to apply planning policies that would have maximised revenue to Government, which bore a negative impact on the assurance of value for money. Finally, the NAO considered the negotiating constraints imposed on the GPD as limiting the extent of negotiations. Particularly relevant were the political commitment to achieve the objective of returning private land to the public, the timeframe within which this was to be attained and that compensation was to be settled through the exchange of land. The overall impact of these and other constraints cited render the ascertaining of whether value for money was secured by Government as debatable.

Appendix

Request by the Public Accounts Committee



MINISTERU GHALL-ĠUSTIZZJA, KULTURA
U GVERN LOKALI
30, TRIQ IT-TEZORERJA, VALLETTA, MALTA

Ilum it-23 ta' Ġunju, 2015

Lis-Sur Anthony Mifsud
Awditur Ġenerali
National Audit Office
Notre Dame Ravelin
Floriana

Qed niktibulek b'referenza shiha u per konsegwenza tas-seduta tal-bierah fil-Kumitat għall-Kontijiet Pubbliċi in segwitu tal-investigazzjoni li ntalbet minn membri tal-Oppożizzjoni dwar l-esproprijju ta' proprjeta' fi Strada Zekka, Valletta.

Biex ikun aċċertat li dejjem ġew rispettati l-prinċipji ta' *good governance, value for money*, trasparenza, kontabbilita' u li ma kien hemm ebda pressjoni politika ahna 'l hawn taht iffirmati Membri Parlamentari u membri tal-Kumitat għall-Kontijiet Pubbliċi nitolbuk tinvestiga każijiet li saru bejn l-2006 u l-2013 fejn fihom kien hemm esproprijazzjoni u permuta da parti tad-Dipartiment tal-Artijiet senjatament - imma mhux limitatament għal u bla preġudizzju għas-senjalizzazzjoni ta' każijiet ohra iktar 'il quddiem – is-segwenti każijiet:

- 1) Il-każ tal-Fekruna fix-Xemxija.
- 2) Il-każ tax-xiri tal-(a) *freehold* ta' 236, 237 u (b) taċ-ċens temporanju ta' 233 Triq ir-Repubblika, Valletta
- 3) Il-każ tal-proprjeta' ta' Spinola Road, fuq ix-Xatt ta' San Giljan proprjeta' ta' eighty two Company Limited;
- 4) Il-każ tal-ex birrerija tal-Lowenbrau f'Hal Qormi.

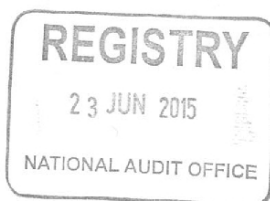
Insellu għalik,


Owen Bonnici


Edward Zammit Lewis


Chris Agius


Charles Mangion



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2016-2017 (to date) Reports issued by NAO

NAO Work and Activities Report

March 2017	Work and Activities of the National Audit Office 2016
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NAO Audit Reports

July 2016	An Investigation of the 2015 Local Councils' Capital Projects Fund
July 2016	An Investigation of Local Councils Funding Schemes launched between 2008 and 2013
September 2016	Performance Audit: Service Agreements between Government and Richmond Foundation Malta
October 2016	Performance Audit: Agreements between Government and YMCA Valletta
November 2016	Performance Audit: Managing and Monitoring the State Schools' Transport Services
December 2016	Annual Audit Report of the Auditor General - Public Accounts 2015
December 2016	Annual Audit Report of the Auditor General - Local Government 2015
December 2016	An Investigation of Property Transfers between 2006 and 2013: The Transfer of Land at Ta' L-Istabal, Qormi
December 2016	An Investigation of Property Transfer between 2006 and 2013: The Acquisition of 233, 236, and 237 Republic Street, Valletta
January 2017	Contribution of the Structural Funds to the Europe 2020 Strategy in the Areas of Employment and Education
February 2017	Information Technology Audit: Cyber Security across Government Entities
May 2017	Performance Audit: Protecting Consumers through the Market Surveillance Directorate's Monitoring Role
June 2017	Performance Audit: Procuring the State Schools' Transport Service