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Dear Sir

Re: Kind Request for investigation as to

- whether there has been full adherence to the contractual terms in contracts pertaining to the disposal of public land by the Government
- whether there has been a transparent and fair process for the evaluation of public land and rescission of servitudes over public property to private interests
- whether there has been effective monitoring by the Government Property Division and its successor - the Lands Authority- to ensure that the terms of the contract/s transferring public land to private parties have been respected
- whether the law regarding the disposal of public land has been adhered to in all aspects
- whether the Lands Authority and/or the Planning Authority have acted with the required degree of prudence and exerted sufficient standards of scrutiny to ensure that the terms of the contracts transferring public land have been adhered to, and not circumvented.
- Whether the evaluation process (and decision as to the amount of compensation for the waiver of any conditions) has been carried out in a transparent manner, according to established procedure and established professional norms according to clearly identifiable criteria which are the same for all players in the field
- Whether fair and good value for money has been obtained and whether factors such as public and social wellbeing have been taken into consideration

The scope of the request for an investigation by the National Audit Office concerns the transfer of public land to private parties in Sliema (at the Fortina Hotel site) by the government.

It transpires that the land in question was transferred by title of emphyteusis in three separate deeds dated 1991, 1996 and 2000 respectively.

This information was published by the former Minister for Lands, Transport and Infrastructure Ian Borg in parliament Borg in reply to a parliamentary question filed by Nationalist MP Karol Aquilina.

The relative reply and parliamentary questions together with the contracts laid on the table of the House are attached.

1991 contract (dated 12th June 1991)

The first plot of land consisting of 465sq.m was sold for €256,000 in 1991 as an extension of the Fortina Hotel complex.

1996 contract (dated 25th January 1996)

The second plot consisting of 2,992sq.m was sold for €250,000 in 1996 for the “exclusive use as an extension of the Fortina Hotel.” One of the conditions specifies that any “building permit” on the site is at the discretion of the Commissioner of Lands.

2000 contract (dated 15th February 2000)

The third plot consisting of 1,421 sqm was sold for €920,000 in 2000.

Contract dated 15th January 2000

The relevant clauses of interest are as follows:

A clause on the 4th page of this contract obliges the emphyteuta to provide a *bocci* pitch and attendant facilities for free to the public. The clause states that if the *bocci* pitch is not situated within the confines of the site, it has to be relocated elsewhere and also be accessible for free to the public.

There is no evidence that this clause has been complied with. Nor is there any evidence of a rescission of this servitude or obligation.

In fact, the former Lands Authority CEO Carlo Mifsud confirmed that the original deeds for the land on which the hotel was built had not been revised. “Any such revision, as in this case, would require a parliamentary resolution,” Mifsud told MaltaToday (newspaper article published in Maltatoday on the 24th April 2018 (https://www.maltatoday.com.mt/news/national/86328/parliamentary_resolution_needed_for_fortina_development#.Ww7dkEiFPIU))

It is being contended that a rescission of the sort would require parliamentary authorization, as it would effectively mean the disposal of public land. Moreover, it would be assumed that there would be payment commensurate with the market value of the land paid to the government for such a rescission. There is no information or record of this payment being made and of the mechanism used to evaluate the true import of the value of the rescission. In view of the fact that the site in question is a prime location in an area where property prices are very high, it would be expected that government disposal of public land is effected at an equivalent level.

The importance of the government disposing of public land for a good return is even more vital in this case, where open space satisfying a social and cultural function – that of a *bocci* pitch – has been denied to the public for no apparent reason to justify the departure from the terms of the contract. This is even more vital in a locality such as Sliema where residents are being crowded out of recreational areas by commercial establishments and where space is at a premium.

Recently in April 2018 the Planning Authority approved Planning Application Number 6252/17 which makes does not provide for the *bocci* pitch referred to in the deed.

The “public” open space approved in this permit is found on 2 separate levels, is paved over with minimal green landscaping and is more of an atrium between restaurants, residential buildings and kiosks – a commercial space. (Documents attached show the approved plans on Level 00 and Level 01.

Moreover it is clear that the *bocci* pitch was not in evidence anywhere from the 1990s until 2018 and there is no indication of where it is to be provided in the new approved plans.

In any case, the condition was not respected for 20 years. A rescission of this condition could only have been effected by means of a parliamentary resolution. There is no evidence of this having taken place.

A Clause (reproduced below) on the second page of this contract imposes 2 other restrictions on the emphyteuta:

- 1) That there should be no buildings built in the area indicated without the prior consent of the Commissioner of Lands except for those specified in the contract, and
- 2) That any buildings constructed should not exceed the height of the road levels specified in the contract

There is very clear evidence to show that these conditions were not respected.

The contract states that no buildings should be built without prior permission from the Commissioner of Lands except for:

- A boundary wall,
- A swimming pool
- Emergency exits, Substation extension
- Garden landscaping
- Toilets which do not exceed 30 square metres
- Reconstruction of *bocci* pitch and rooms to serve as stores and toilets for the store, not exceeding 30 square metres.
- above a specific road level in the area marked ABCSD and

Din l-art qiegħda tinblegħ libera u franka u din "vacant possession" u qiegħda tingħata għall-uzu esklussiv bħala estensjoni tal-Fortina Hotel.

Fuq din l-art qed jingħad espressament li ma jistax isir fuqha ebda kostruzzjoni mil-livell tal-art ezistenti illum, liema livell mhux aktar għoli mill-punt ta' triq immarkat "XX" a rigward l-art immarkata "A", "B", "S", "C" u "D" u mhux aktar għoli mil-livell PQ a rigward l-art immarkata "P", "Q", "R", "S", u "B" fil-pjanta bl-ecezzjoni għal dak li ser jingħad aktar 'l isfel f'dan il-paragrafu u cioè:-

i. "Boundary wall"

ii. "Swimming pool" li ma tkunx iktar għolja mil-livell tat-triq PQ immarkata fuq l-istess pjanta eccezzjoni xi "copings" normali, liema swimming pool ma tistax teccedi l-kejl ta' sebgha milja u tletin metru kwadru.

iii. "Emergency exits" għall-immobbli li se jn jnbnw taht il-livell ta' l-art,

iv. Bini għall-estensjoni tas-Sub Station tal-Enemalta,

v. "Garden landscaping";

vi. Toilets ta' dimensjoni ta' mhux aktar minn tletin metri kwadri,

vii. Rikostruzzjoni tal-pitch tal-bocci u knamar li ma

jeccedux tletin metri kwadri biex iservu bħala store u toilets għall-istess pitch tal-bocci.

Ma jkunx jista jsir ebda xoghol iehor ta' bini jekk qabel ma jkunx hemm permess bil-miktub mahrug mill-Kummissarju ta' l-Artijiet, liema permess jinghata fid-diskrezzjoni assoluta tal-Kummissarju ta' l-Artijiet, u dan jirreferi biss ghal xoghol ta' bini li jsir 'il fuq mil-livell tat-triq fuq riferit u markat "XX" u mil-livell l-iehor moghti "PQ".

Kemm -li darba jsir xi bini jew kostruzzjoni minghajr il-permess mehtieg il-Gvern ikollu d-dritt jitlob ir-rexizjoni u thassir ta' dan il-kuntratt minghajr ma jkun obligat li jhallas kwalunkwe kumpens ghal-benefikati jew xoghljiet li jkunu lehqu saru fuq l-art.

Il-kompratur jkun jista' jaghmel xogholijiet anke ta' bini li jigi taht il-livelli imsemmija.

Fuq l-art in vendita jezistu xi strutturi li l-kompratur huwa awtorizzat li jwaqqa' u jiddemolixxi.

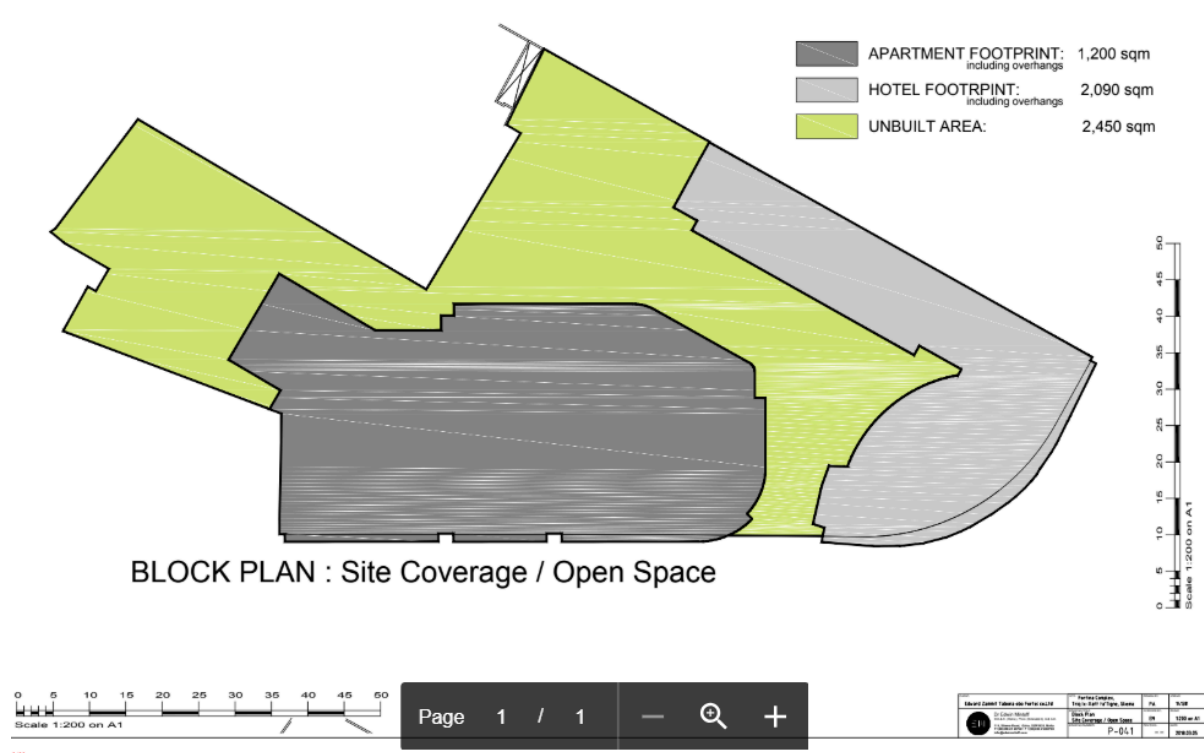
Il-kompraturi jiddikjaraw li jafu li fuq l-art in vendita jezisti "pitch tal-bocci" li prezentement jigi uzat mill-pubbliku n generali bla hlas. Il-kompraturi jobbligaw ruhhom li jhallu dan il-pitch tal-bocci fejn hu jew jekk l-art li llum jokkupa dan il-pitch tkun sejra tigi

utilizzata mod ieħor, jagħmlu "pitch" tal-bocci ieħor tal-istess daqs u bl-istess facilitajiet, liema Pitch jkun ukoll accessibbli għall-pubbliku in general i bla ħlas. Ikun fejn ikun l-imsemmi Pitch il-kompraturi jkunu jistghu jagħmlu regolamenti u jiehu l-passi u jimplimentaw mizuri u proceduri kollha necessarji sabiex jassiguraw is-sigurtà u l-buon ordni fit-tmexxija, organizzazzjoni u attività ta' l-imsemmi pitch tal-bocci.

However the recently approved development application PA 6252/17 approved by the Planning Authority clearly shows that multi-storey buildings will be erected, rising well-above the level allowed by the initial emphyteutical deed.

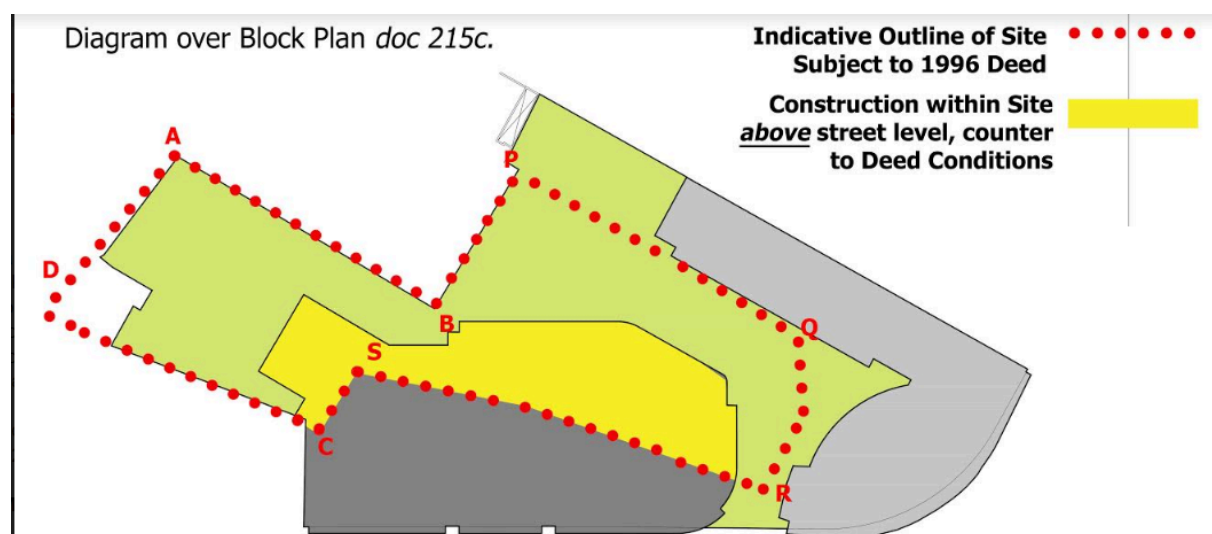
The application approved is for: "Demolition of existing 4 star hotel and the Spa Wing of the 5 star hotel, and excavation of site. Construction of 3 levels of below ground car parking; construction of ground floor retail complex under a landscaped Public Open Space; and construction of residential complex rising to a maximum of 15 floors above street level. Development also to include complete refurbishment (including internal alterations) of the existing 5 star hotel, the construction of five additional floors on the hotel tower and construction of stepped hotel block rising to 13 floors above the plaza, in place of the Spa Wing."

The image below is Doc 215c from the Fortina Application which is a Block Plan of the Site Coverage/Open Space.



The following diagram (drawn by the author) shows the following:

1. An indicative outline of the area subject to the 1996 emphyteutical deed (red dots)
2. Approved construction within site ABOVE the heights stipulated in the 1996 deed. (yellow)



Please note that the height limitations emanate from the contracts and **not** from planning legislation.

Moreover it would appear that the evaluation and the parliamentary discussion focussed **only** on the waiver of the condition that the Fortina site/s be used for hotel and touristic purposes and not on the waiver of the other conditions pertaining to the retention/restoration of the bocci pitch and the height limitation according to the deed. There would seem to be an omission and oversight in this regard.

Evaluating Committee was not given access to Contracts and was Misinformed regarding Onerous Conditions

It should be pointed out that 3 architects were contracted by the Lands Authority to evaluate the property. As seen from Page 8 of the attached document (extract included below) these architects claim that they were not provided with the relevant contracts and furthermore they were informed that the property was freehold and that there were no onerous conditions attached to the contract. This is clearly incorrect as the conditions explained above are onerous and impact the evaluation of the property. It is also untoward to have an evaluation without scrutinising title deeds.

(h) The Declaration of the periti and also other experts involved in the valuation, in accordance with the previous sub article, that they do not have any conflict of interest on the date of valuation; the undersigned confirms that no conflict of interest arises in advising you of the opinion of the value of the property, since the undersigned or his associates will not benefit from the valuation instruction, other than the valuation fee.

Title documentation and leases were not provided to us; however we have been informed that this is a freehold property – refer to Appendix F for further contract details. Unless notified to the contrary, we assume that each property has a good and marketable title and is free from any pending litigation. We further assume that all documentation is satisfactorily drawn and that unless disclosed to us, there are no unusual or onerous restrictions, easements, covenants or other outgoings, which would adversely affect the value of the relevant interest(s). We recommend that reliance should not be placed on our interpretation thereof without prior verification by your legal advisors.

The report will be of use to the Lands Authority and its professional advisers and is for the sole purpose stated above. Liability cannot be accepted if it is relied upon by anyone else, whether for the stated purpose or any other.

Extract from Evaluating Architect's declaration

Former CEO of Lands Authority associated with Fortina owners

It is being further pointed out that the former CEO of the Lands Authority while these evaluations were taking place was Mr James Piscopo, who was a business partner of the owners of the Fortina site and is now acting as their consultant following his departure from the Lands Authority.

It is not known whether this had any impact on the evaluation process. The following articles may be pertinent in this regard

<https://timesofmalta.com/articles/view/lands-authority-boss-is-in-business-with-fortina-shareholders.690341>

<https://theshiftnews.com/2021/04/14/james-piscopo-becomes-zammit-tabonas-advisor/>

<https://timesofmalta.com/articles/view/government-ignored-advice-from-lands-officials-over-fortina-deal.721600>

<https://timesofmalta.com/articles/view/architects-evaluation-on-fortina-project-changed.722386>

<https://www.independent.com.mt/articles/2019-07-17/local-news/Change-of-use-for-Fortina-land-approved-in-fiery-parliamentary-session-6736211024>

An article of mine about some aspects of the matter may be found here <https://timesofmalta.com/articles/view/the-disappearing-bocci-pitch-and-other-public-places-arnold-cassola.774524>

In view of the above, your investigation of the matter would be kindly requested by the undersigned,

Yours truly

Arnold Cassola