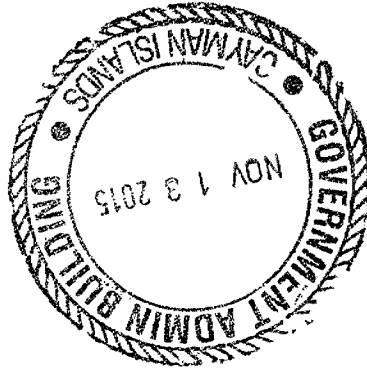


COPY



13<sup>th</sup> November, 2015

Dear Honorable Premier and Honorable Minister Moses Kirkconnell

**Re – Cruise ship dock in George Town harbor**

We are instructed by a group of Caymanians calling themselves “Concerned Caymanians” (whose address is c/o our offices at DMS House, George Town, Grand Cayman) in relation to the proposed George Town cruise piers project (“Cruise Pier Development”). It has been reported in the press and on the Government website that the Cruise Pier Development has been approved by Cabinet:

*“Premier Alden McLaughlin confirmed Tuesday that Cabinet has formally approved the decision to move to the next phase of the proposed cruise pier development, which will involve discussions with cruise lines on a preferred financing model. United Kingdom approval of the port development in George Town harbor will depend on the Cayman Islands government’s ability to show the project is self-funding.*

Mr. McLaughlin acknowledged, *“We are still a long way from saying this project is a go.”* (Cayman Compass 29<sup>th</sup> October 2015)

This letter should be treated as a letter before action as a Cabinet decision equates to a final policy decision (“Final Decision”) having been made (as per the Judicial Review pre – action protocol) and you should seek immediate legal advice from the Attorney – General’s Chambers, who have been copied in as a matter of courtesy and to expedite matters. This is the stage that a Judicial Review is appropriate - *McLaughlin v The Ministry of Home Affairs*.

In respect of the reported qualifying statement of Mr McLaughlin - is it the position of the Government that a Final Decision has been made? This is clearly significant in respect of

whether the rigorous limitation periods now apply. For the avoidance of doubt, we assert that a Final Decision has been made as the Government have now approved the construction of piers; and it seems that the ‘do nothing’ or tendering options have been rejected.

This is supported by the Cayman Government website

(see <http://www.gov.ky/portal/page/portal/mtehome/announcements/cabinet-approves-cruise-berthing-business-case>), which stated: -

***“Cayman Islands (30 October, 2013).***

***Cabinet has approved the Outline Business Case (OBC) for the Cruise Berthing Facility and the document has been released for public engagement. This marks the successful completion of the second step in the cruise berthing project, and paves the way for the procurement process and EIA to begin.”***

The above press release is a clear public communication of a decision to approve of the construction of the pier even if there may be subsequent hurdles to overcome. It is a decision of sufficient weight and gravity to make it amenable to judicial review.

As you are aware there is significant interest in, and concerns about, the environmental and financial impact of the proposed Cruise Pier Development, both as regards George Town and the Cayman Islands in general. In particular, there is conflicting evidence in relation to the extent of the environmental impact on the coral reefs and particularly Seven Mile beach and the vicinity of the harbour. There are dangers of a potentially severe impact on the entire ecosystem of the reefs, and possibly the beaches, which in turn would have a large environmental and commercial impact on these Islands.

A public body undertaking consultation must do so fairly, letting those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a great deal) to enable them to make an intelligent response - *R v North Devon HA ex p Coughlan* [2001] QB 213, per Lord Woolf MR at §112, confirmed and approved in subsequent cases such as *Edwards and Pallikaropoulos v Environment Agency and others* [2006] EWCA Civ 877, per Auld LJ at §90, *R (on the application of Eisai Limited) and the National Institute for Health and Clinical Excellence, and*

*others* [2008] EWCA Civ 438, at Richards LJ at §24-§33, and *R (on the Application of Royal Brompton and Harefield NHS Foundation Trust) v Joint Committee Of Primary Care Trusts & Anr* [2012] EWCA Civ 472, Arden LJ at §8 – 14. It is for the Court, not the decision maker, to decide what is or what is not fair in the consultation process - *R (Medway Council and others) v Secretary of State for Transport* [2002] EWHC 2516, at §32.

The Cayman Islands Constitution [section 19] requires that all acts and decisions of public offices must be lawful, rational and proportionate. It also provides that every person whose interest has been adversely affected by such act or decision has a right to be given written reasons for that act or decision.

Our client would assert that: -

- (i) the consultation process leading up to the Cabinet decision has not been an open and fair process, despite public protestations to the contrary, and/or
- (ii) the Government had pre – determined that the Cruise Pier Development be built, whatever the evidence might be, and/or
- (iii) the decision to build a Cruise Pier Development was not in the public interest nor a rational or proportionate decision; and that the Government should reconsider that decision given the significant risk of adverse environmental and commercial impact on these Islands.

Our client is asking for the Government to reverse its decision to proceed with the Cruise Pier Development and to consider other ways that are less damaging to the environment to develop the cruise ship industry in these Islands. In the meantime, our client requests that you confirm that no further steps be taken by the Government in progressing with the Cruise Pier Development.

#### **OTHER INTERESTED PARTIES**

There may be a great many parties interested in a Judicial Review process for the Cruise Pier Development, and we expect that these include: -

**Cayman Islands Tourism Association**

1320 West Bay Road

P.O. Box 31086

Grand Cayman KY1-1205

Cayman Islands

**Chamber of Commerce**

Unit 4-107, Governors Square

23 Lime Tree Bay Avenue, West Bay

Grand Cayman, Cayman Islands

**Central Caribbean Marine Institute**

Little Cayman Research Centre North Coast Rd

Little Cayman

KY3 2501

Cayman Islands

**The National Trust**

558 South Church Street, Dart Park

P.O. Box 31116, Grand Cayman, KY 1-1205

## **Save Cayman**

PO Box 479

George Town, Grand Cayman

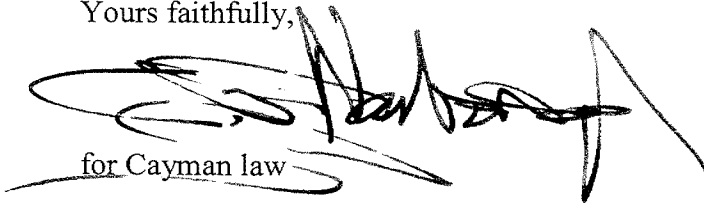
KY1-1106 Cayman Islands

**To assist our clients in making a decision whether or not to proceed with making an application for leave to apply for judicial review, please clarify the following matters:**

- 1) Whether the Government considers that a Final Decision has been made?
- 2) When that Final Decision was made – if (1) is the case?
- 3) A full explanation of why a Final Decision has been made if (1) is the case?
- 4) If the Final Decision has not been made, then what the next stages are in the process and when you would expect a Final Decision to be made?
- 5) How our client and other interested parties can make representations as part of that process?
- 6) What evidence has been relied upon in making the Final Decision and please provide us with copies of the evidence that has been considered?
- 7) What weight has been given to the conflicting evidence?
- 8) What outside consultants have been instructed in this process and what was the process of selecting those consultants?
- 9) What declarations of interest any members of government or public official has made in this process as to their financial interest in the Cruise Pier Development – both direct and indirect.
- 10) How has the Government complied with its obligations under the 'Framework for Financial Responsibility' in considering this matter?
- 11) What Alternative Dispute Proposals would you consider as an alternative to Judicial Review bearing in mind the strict timeline for applying for leave?
- 12) Whether the Government will agree to have the Cruise Pier Development stopped whilst the decision is reviewed by the Grand Court?

Please provide a full response to these requests within 14 days as well as to any other interested parties you may be aware of. Please serve your response on Chris Narborough, Cayman Law, Ground Floor, DMS House, 20 Genesis Place, PO Box 1103, KY1-1102 George Town, Grand Cayman.

Yours faithfully,



for Cayman law

cc

HON. Attorney General

Cayman Islands Tourism Association

Chamber of Commerce

Central Caribbean Marine Institute

The National Trust

Save Cayman