

23rd December 2013

Invader's Bay Review

There now needs to be a complete and open review of the Invader's Bay matter. That is imperative if the public interest is to be safeguarded.

The catalogue of irregular dealings and improper procurement practice at Invader's Bay has now grown so that we are facing an important moment of decision. At this point there has been no announcement as to an award of contract or grant of any lease, so the threshold of binding legal agreement has not been crossed. In investment language, we are at the 'inflection point', which is where the prudent investor has to make a decision to continue or abandon a course of action.

This is the exact moment we should be calling for an open review of this major public project, before any binding commitments are made.

The Commission of Enquiry is an often-used device to probe into matters of serious public concern. In relation to construction and property development, we have had recent CoEs into the Piarco Airport Project, UDECOTT, Land-Date and the Biche School Project, to name a few.

The public has a sceptical attitude to these Commissions, since they never seem bring the desired results in terms of arrests of prominent public officials or disgorgement of stolen monies. Many people dismiss CoEs as 'talk shops' set up to enrich lawyers, but I do not dismiss them as effective ways to serve the public interest. Despite the imperfections of the Enquiry process, including the fact that key witnesses can refuse to appear without incurring any serious penalties, there are real benefits. The main one, in my view is that a CoE allows us in the public to learn about major matters of public concern which would likely have remained hidden.

That is the reason we need to retain this process so that the wrongdoing of the past can be exposed, so that we can have the possibility of avoiding those in the future. The weak point of the process is that it always takes place after the crimes have been committed, so during the Bernard Enquiry we were learning about the already-constructed Piarco Airport Terminal. Too late to prevent the massive theft and waste of Public Money.

That is why we need to consider a shift in our approach to the question of enquiries into questionable

public projects, since the process is a reactive one, completely unable to stem wrongdoing.

At the 'inflection point' now occupied by the Invader's Bay project, we have an opportunity to examine this large-scale development before any significant expenditure of Public Money so that we can detect and deter wrongdoing. I am not yet settled in my mind as to exactly what type of review is best here, but whatever happens, it must be independent and committed to publication of its findings.

Some of the main issues which such an Enquiry or Review should examine are -

- Consultation – The complete lack of consultation in this large-scale development proposal for our capital city would be addressed by the process. The land is vested in UDECOTT via a lease and that organisation has repeatedly claimed to have implemented the recommendations of the Uff Report. The 17th of those recommendations states *“User groups and other interest groups should be properly consulted on decisions regarding public building projects, to ensure that relevant views can be expressed at the appropriate time and taken into account before decisions are made”*. Given the swiftness with which the Couva Children's Hospital – which is being executed via UDECOTT – emerged in March 2012, we know for sure that those recommendations are not being observed by UDECOTT. Even looking beyond UDECOTT and its conflicting 'versions', we can see the contradictory actions of the Ministry of Planning & Sustainable Development supporting a public consultation process at King's Wharf in San Fernando, yet refusing to hold public consultations on Invader's Bay in Port-of-Spain.
- Environmental Concerns – The Invader's Bay lands are extensive waterfront holdings in State property. Their proper development of those lands must take full account of drainage issues and the impact on the environment, including the marine-life issues arising in any waterfront project. I have before me the EMA's letter of 14 November, which confirms that there have been no requests or Certificate of Environmental Clearance (CEC) applications for the Invader's Bay lands. In addition, the EMA records provided to me show that the most recent application for a CEC at Invader's Bay was in January 2007. It is not possible to obtain planning permission without EMA approval, so there are other implications of the lack of these approvals.;
- There is no link between the RFP and the other three strategic plans for the POS area. That violates the fundamental notion of strategic planning in that existing plans are ignored for no given reason. Piecemeal planning and development is detrimental to the Public Interest. So, who was the author of that RFP and who in the Ministry of Planning approved such a document?;
- The Request for Proposals (RFP) published by the Ministry of Planning in August 2011 seeking Design-Build proposals for the development of these lands specified an entirely inadequate 6 weeks for submissions. Whose recommendation was it to truncate the development process in this fashion?;
- The evaluation rules were only published after the closing-date for the tenders, so how did the proposers know what criteria to meet? That late publication is in breach of proper tender procedure, so the entire process is voidable and therefore illegal.
- Legal Instructions and advice – Also critical to any review process would be the details of the legal advice sought and obtained at various stages of this process. The Ministry is adopting a bizarre, secretive stance in which the advice is claimed to vindicate their actions 'thus far', yet that legal advice is being suppressed. The JCC has taken legal action to challenge that unacceptable secrecy in this most public matter.;
- Infrastructure – The 2014 Budget discloses a \$50M allocation for infrastructure at Invader's Bay, which of course is only a small part of this substantial cost. In the absence of environmental or planning approvals, it is difficult to establish the cost for proposals of this nature, since a design cannot be completed.
- Allegations of squatting – Finally, we turn to one of the most vexed phrases in our lexicon where land is concerned. The issue of squatting, which is the unauthorised occupation of land not in your ownership. From the sequence of images shown below, we can trace some elementary conclusions:

1. the first is a map/plan, which uses a dotted line to illustrate the boundary between the Invader's Bay property and adjoining Port Authority lands to the north...the physical boundary is occupied by a watercourse/ravine and those 'Port' lands are occupied by MovieTowne/PriceSmart, a green play park and the Marriott/BHP-Billiton building
2. the second (middle image) is an aerial photo which shows the Invader's Bay land bare of vegetation
3. the third is an aerial photo which shows the Invader's Bay land re-vegetated with mangrove and what appears to be a bare excision, immediately south of MovieTowne's western carpark...that is a gravel-paved area, which is south of the watercourse I mentioned earlier...it is accessed via a basic bridge from the said MovieTowne carpark.



Plan of Invaders Bay



Invaders Bay cleared of vegetation



Invaders Bay Regrown

I am asking whether MovieTowne has a lease, licence or tenancy agreement to occupy those lands. Does MovieTowne pay any rent, licence fee or charge of any sort for the use and occupation of those lands? What action is UDECOTT taking on this? What action is the Commissioner of State Lands taking on this? It would be unacceptable for an entity in breach of State policy to benefit from the decisions of the State. I hope that is not what we are seeing here.

We need a full, independent and open review of this Invader's Bay matter. Do you agree?