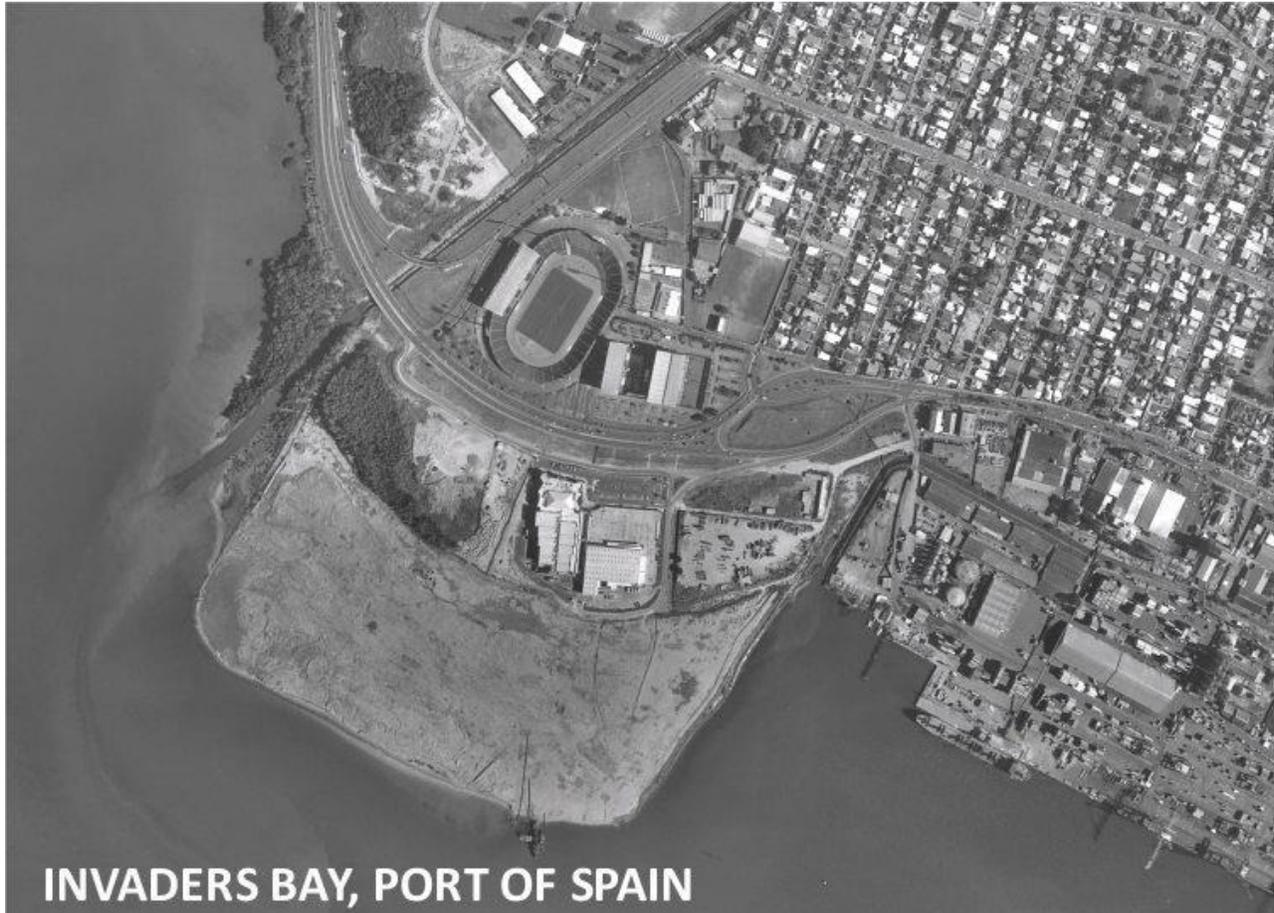


Invader's Bay – Suspicious Motives

26th November 2014



The proposed development of Invader's Bay will be the largest in our Capital City in living memory. The entire process is tainted by fundamental irregularities, any one of which ought to be enough to stop the development.

Some of those irregularities at Invader's Bay include an improper and voidable tendering process; failure or refusal to hold Public Consultations; breach of the Central Tenders' Board (CTB) Act and most recently, a wrong-sided policy on legal advice.

The State has appealed the High Court decision of Justice Frank Seepersad on 14 July 2014 to order publication of the legal opinions on which they had been relying thus far. That hearing is now set for Wednesday 28 January 2015 at the Appeal Court in POS. At the preliminary hearing on Thursday 20 November, the State was represented by a seven-member team of attorneys, led by Russell Martineau SC.

Tender rules

Minister Tewarie has repeatedly told the public that the Appraisal rules for the Invader's Bay development were first announced in his speech to the Annual Dinner of the T&T Contractors' Association on Saturday 5 November 2011. That is true, I was there and heard the Minister do just as he said. The issue here is that the closing-date stipulated in the Invader's Bay Request for Proposals (RFP) was 4 October 2011, which was over one month before the rules were published. Given that fact, the proposers would not have known the rules of the competition and it is fair to say there was no competition at all. None. Just imagine the rules for a Calypso competition being distributed the week after the singers had performed. The RFP process for Invader's Bay was therefore improper, voidable and illegal.



The most disturbing aspect of this nonsense, is that it raises disturbing questions as to what is fast becoming a new normal in our society. To my mind, there are two possibilities.

The first is that the Minister was simply unaware that he was describing improper and unlawful acts. If that is the case, one has to wonder at the quality of advice available to our Cabinet. Are we now to accept that this is the proper way to proceed?

The second possibility is that the Minister was properly-briefed that the late publication of those rules was improper and that the entire RFP process was therefore voidable, but chose to act as if the whole process was 'above-board'. That Minister continues to insist that there is nothing improper taking place at Invader's Bay and so on. I tell you.

Consultation

For whatever reason, there is no word as to when the Ministry of Planning & Sustainable Development (MPSD) or the Town & Country Planning Division are going to host the first Public Consultation on this large-scale development in our capital city.

We have seen widely-publicised Public Consultations on the South-West Growth Pole and the redevelopment of King's Wharf in San Fernando (both organized by the very MPSD), Constitutional reform, City status for the Municipality of Chaguanas and so on. Yet, there is no word as to when the Invader's Bay proposals are going to be open to Public Consultation. It is critical that these consultations take place before decisions are taken, yet we are having some concerning signs that the opposite is taking place.

The CTB breached – Legal Advice

The CTB Act requires all tenders conducted by Ministries and Statutory Agencies to be done via the CTB. The JCC continues to hold its view that publication of the Invader's Bay RFP at the end of August 2011 was in breach of the Central Tenders' Board Act.

The Minister now claims to have several legal advices, all of which support the course of action taken by MPSD in this RFP, thus far. Those advices are said to come from the Legal Adviser to MPSD and the Office of the AG. The State has steadfastly refused to publish the very legal advices which are said to support its actions in relation to this RFP at Invader's Bay.

As mentioned earlier, the JCC has been successful in obtaining a High Court ruling to order the publication of those legal advices and letters of instruction.

Minister Tewarie stated that the legal advice has now been made public, so he does not understand why the legal action to get the opinions.

A careful comparison can show the truth of a situation like this one.

In the past when various governments made proposals which were heavily criticized, one of the options was to seek independent legal advice from eminent lawyers. The advice was then published, provided that it supported the course of action the government was proposing. Of course if the advice contained damaging criticisms of the proposed course of action, the public would be kept in the dark and it would be business as usual. The simple point being that the client always has a choice as to when to disclose a legal opinion. In the case of the client being a government in our country, the pattern noted raises reasonable doubts as to whether the actions taken are strictly in the public interest.

The sidebar contains a relevant example from June 2010.

Here we can see the pregnant paradox at work down in Invader's Bay.

On the one hand we have a Minister claiming to have legal advices which fully support the actions of the Ministry. On the other hand that Ministry is not only refusing to publish, but also taking strong legal action to suppress those opinions. You see?

The real question would seem to be why the expenditure of scarce public resources to suppress opinions which are supposedly in support of official actions. That is the question

Legal Opinions are not inherently secret

In June 2010, the biggest controversy was one raised by Leader of the Opposition, Dr. Keith Rowley, whether it was proper to have Jack Warner serve in Cabinet, while continuing to operate as a FIFA Vice-President. The newly-elected Peoples Partnership government sought written advice from four legal experts, former President Sir Ellis Clarke, Sir Fenton Ramsahoye SC, Sir Michael Beloff QC and Russell Martineau SC. All four luminaries held that no law was being broken and the PP government took the position that they were vindicated in appointing Warner to Cabinet.

The opinions of those eminent lawyers were published by the government. This appears to be a straight case of 'Horses for courses'.

and the JCC will continue to press for transparency and proper process in this Invader's Bay matter.

The existing practice allows the State to have discretion as to whether legal advice can be released. If that practice is upheld at the Appeal we would be facing a future in which any questionable project or policy could be concealed behind the screen of legal professional privilege. That outcome would jeopardise the Public Interest.

According to the iconic American jurist Louis Brandeis, speaking on eradicating corruption –

'Sunlight is the best Disinfectant'