

13th August 2015

Facing the Facts

Two important laws were partially-proclaimed by the President at the end of July –

1. **The Public Procurement and Disposal of Public Property Act**, which is intended to control transactions in Public Money, and the
2. **Planning & Facilitation of Development Act**, which is intended to provide for effective control of physical development.

Both those laws would be critical in controlling the worst excesses in terms of waste and theft of Public Money as well as the scourge of unplanned development. There is still substantial work to be done to properly implement those new laws, neither of which will actually come into effect before elections on 7 September, so our stern attention will therefore be essential.

The campaigning and committee-work to achieve those new laws has been demanding, so it is important to re-state our fundamental concern as to the sheer hostility of high-level public officials to the truth. This is a fundamental point since the new laws create modern, transparent and participative processes. If the key public officials maintain their hostility to the truth, we would be entering a period of serious struggles to implement these new laws.

These examples speak to the official hostility to the truth with which we are beset.

The Uff Proceedings

The Uff Enquiry examined the Public Sector Construction Industry with particular reference to UDECOTT and HDC between 2008-2010. Its Report was published in April 2010 which was an important first, since a Commission of Enquiry Report had never been published right after its completion.

Whilst in Opposition, the Peoples Partnership promised to implement the 91 recommendations of the Uff Report, but that has not happened, even though 90 of them could have been implemented without any need for Parliamentary approval. That failure or refusal to keep that election promise has cost our country dearly in terms of the waste and theft of Public Money as well as the continuation of the opaque planning process which is detrimental to the Public Interest.

The Uff Enquiry was innovative in creating a website which ‘streamed’ the hearings and hosted the witness statements, daily transcripts and all the documents which formed part of this critical examination of our country’s large-scale business affairs. Given the many fields covered by our Public Sector Construction industry, the material in those proceedings offered deep insights into areas such as Government, Engineering, Construction (local vs foreign contractors), Surveying, Project Management,

UFF REPORT INTO THE CONSTRUCTION SECTOR IN TRINIDAD AND TOBAGO



Project Financing, Economics, Corporate Governance and Accounting. Despite the fact that the Uff report had been published, at some point near the end of 2010, the entire website was shut down.

The JCC protested this shutdown by arguing with successive Ministers of Justice – Volney, Moore and George – for the unprecedented insight these documents offered into our country’s affairs. One Minister even went so far as to state that the evidence in that Enquiry could not be published since that might jeopardise possible future prosecutions. Of course that assertion makes absolutely no sense, given that the material had already been published on the website for two years and the hearings had all been broadcast, via TV and internet, twice daily. To this day, there has been no proper explanation for the disappearance of that material. ***What is really sobering is that the Uff Enquiry was a critical examination of the operations of the previous PNM administration, yet the current Peoples Partnership government refused to release the material.***

The Bernard Report

The Piarco Airport project, which was carried out by the UNC administration between 1996-2000, was the subject of the 2002-2003 Bernard Enquiry. The Bernard Report was completed in August 2003, but despite promises by several politicians in the PNM administration, it was never published. ***Again, we are witness to the same seamless hostility to the truth, with the Bernard Report into alleged wrongdoing of the UNC administration being effectively suppressed by the PNM government.***



In October 2012, the JCC requested publication of the Bernard Report under the provisions of the Freedom of Information Act (FoIA). We were told by the PS in the Office of the Prime Minister that our request was being denied under S.24 of the FoIA, which exempts documents which have been considered by Cabinet. Given that most major decisions are considered by Cabinet, that exemption could defeat most FoIA requests. The key fact in this case, however, is that S.24 only exempts the documents considered by Cabinet for ten years after publication. The Bernard Report was completed in 2003, so its exempt status expired at the end of 2013. Despite our letters pointing this out, there has been no acceptance of the requirement to now publish the Bernard Report.

Invader’s Bay

The JCC, together with our Kindred Associations, made strong objections to this Request for Proposals (RFP) published in August 2011 by the Ministry of Planning & Sustainable Development (MPSD) to invite Design-Build-Finance proposals for the 70 acres of reclaimed State lands near MovieTowne in POS. ***In December 2011 we wrote to MPSD specifying our serious concern that the RFP process was void, as a result of the evaluation rules being published after the closing-date, as***



well as being in clear breach of the Central Tenders Board (CTB) Act. The Minister sought legal advice on the CTB point in response to our concerns, which was itself surprising in that the RFP process would seem to have been initiated without taking advice on that critical point. It does not seem that any advice was sought on the point of the process being void by the late publication of the evaluation rules.

The Minister, Dr Bhoendradatt Tewarie, stated to the Parliament and in direct reply to us that the legal advice was that the RFP process conformed with the CTB Act. Our requests for that legal advice were refused and the JCC went to Court under the FoIA to obtain the instructions and the several legal advices. The High Court ruled in favour of the JCC and ordered publication of the requested material, but the MPSD appealed on the point that the preservation of attorney-client confidentiality is in fact a valid exemption under s.29 of the FoIA. In this case it seems clear that legal advice relating to the development of Public Property must recognise the public as the ultimate client.

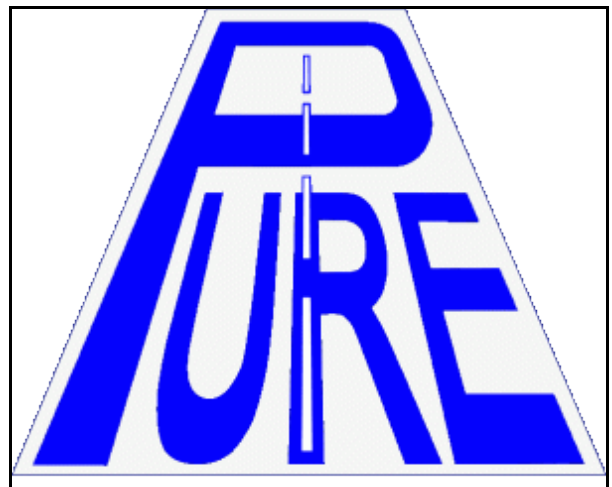
The most interesting aspect of this is that Minister Tewarie told the Parliament on Friday 18th July 2014 that the government had no objection to releasing any other details of the proposed development. The JCC then sent a detailed series of questions into the other aspects of this large-scale development. The MPSD reply confirmed that 10.2 acres had been allocated to the DACHIN group (the MovieTowne principal is the said Derek A Chin), with 13 acres for the Invader's Bay Marina group. The MPSD also confirmed that although no planning permission had been applied for, Memoranda of Understanding had been signed with both parties. Despite our requests for the details of the MoUs and the lease terms, no details were provided.

The Minister's statements to Parliament as to the transparency of the process appear to have been over-ambitious, to say the least.

Program for Upgrading Road Efficiency (PURE)

PURE is a significant program for road and bridge works undertaken by the Ministry of Works and in early 2012 that program was audited by the Ministry of Finance in response to serious concerns over alleged corruption.

When the PURE Audit Report was completed in March 2012, then Finance Minister, Winston Dookeran, stated that no evidence of corruption had been found, but that the procurement procedures were not followed efficiently. Those two statements are in apparent conflict with each other, so the JCC requested that the Audit Report be published, so that at least lessons could be learned. ***Minister Dookeran refused to publish the Audit Report, claiming that it was 'an internal document' so there was no obligation to publish, since it would not add anything at that point.***



The Beetham Water Recycling Project (BWRP)

The BWRP is a \$1.03 Billion project of the National Gas Company (NGC) for treatment of wastewater to be sold to WASA which would then sell-on to users at Point Lisas for cooling their industrial plants. The JCC stated its strong objections the way this mega-project was implemented and made the point that *as a public private partnership (PPP) project no business case had been made in respect of this major commitment of Public Money by the State.*

In addition to those concerns, I have also pointed-out in this space that the entire project is an ‘off-balance sheet’ one which was never mentioned in the national budgeting process. None of those concerns have been addressed and other troubling aspects are now emerging as the project proceeds. Those concerns will have to be tackled in another column, but the continuing refusal to explain the costs and benefits is detrimental to the Public Interest. ***When one considers that the PPP is now being advanced as a significant way of procuring public investment in infrastructure, the refusal to provide any proper details is unacceptable.***

Conclusion

If we refuse or fail to examine our significant activities, there is no hope of improvement in our journey to national development. The primary information on what was done, why and with what result, must be published for the benefit of the public. We consider ours to be an educated society, but those views are challenged by the conduct of our public affairs.