

**CAUSE NO. 195 of 2019**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**

**BETWEEN:**

**SHIRLEY ELIZABETH ROULSTONE**

**Plaintiff**

**-and-**

**(1) CABINET OF THE CAYMAN ISLANDS GOVERNMENT**

**(2) LEGISLATIVE ASSEMBLY OF THE CAYMAN ISLANDS**

**Defendants**

**-and-**

**(1) NATIONAL TRUST FOR THE CAYMAN ISLANDS**

**Intervener**

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**SECOND AFFIDAVIT OF STRAN BODDEN**

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I, **STRAN BODDEN** of Government Administration Building, 133 Elgin Avenue, George Town, Grand Cayman, Cayman Islands, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Chief Officer of the Ministry of District Administration, Tourism and Transport of the Cayman Islands Government. I am duly authorized by both Defendants (together "CIG") to swear this affidavit.
2. The matters contained in this affidavit are true and largely within my direct knowledge. Where not in my direct knowledge, I set out the source of my knowledge and believe such matters to be true.
3. This affidavit is supplementary to my first affidavit in these proceedings and its purpose is to address matters relevant to the defence of the Claim (to the extent not addressed in my

first affidavit), now that leave to apply has been granted. The same defined terms are used in both affidavits.

4. There is now produced and shown to me as Exhibit "SB3" a bundle of documents which are referred to below.

#### **The Political and Commercial Context**

5. The Cayman Islands economy is very heavily dependent on cruise ship tourism. There were 1,921,000 cruise ship passengers visiting the Islands in 2018, with an average spend of CI\$96.30 for a total cruise passenger income of CI\$166.5 million. See the extracts from the Cayman Islands Compendium of Statistics 2018 at SB3/[104-5]. Direct cruise tourism expenditures accounted for 4,622 jobs in the Cayman Islands. These workers earned US\$92.2 million in salaries. See SB1/[6].
6. Unlike the vast majority of Caribbean nations at which cruise ships regularly call, the Cayman Islands does not have a berthing facility capable of handling cruise ships. This means that passengers wishing to come ashore must do so by means of tender boats. This is a considerable impediment, causing inconvenience to cruise ship passengers, and a disadvantage to Grand Cayman's cruise tourism industry. Climbing into or out of a tender boat can be difficult, if not dangerous, for elderly or disabled passengers, or those with small children. In addition, a large cruise ship can take up to 4 hours to load or unload its passengers by tender boat. This severely restricts the amount of time (and thus money spent) on Grand Cayman. The use of tender boats also means that many of the newer, larger cruise ships, with more affluent passengers, bypass the Cayman Islands altogether. If the construction of a new cruise ship berthing facility goes ahead as planned, the Islands will be able to accommodate up to 2.5 million cruise visitors *per annum*, as opposed to 1.9m in 2018 (SB1/[7]).

7. The building of a cruise berthing facility has been talked about for more than 20 years. Every government elected since 2000 has had promises of a cruise port in their election manifesto or as part of their delivery plans (see Premier's statement to the Legislative Assembly on 28<sup>th</sup> October 2019, page 2 - SB3/[32]). It has been a manifesto commitment of the Progressive Party for their last 2 administrations, elected in May 2013 and May 2017. The 2013 manifesto discusses the building of a cruise port 'at last' at pages 7 and 9 – see SB3/[190] & [192], whilst in their 2017 election manifesto, at page 14 (SB3/[127]), the Progressives promised to build a modern cruise pier and a larger cargo port. By building the cruise port, the government hopes and expects that more and wealthier cruise passengers will spend more time, and more money, ashore than is presently the case.

#### **Assessing Environmental Impact**

8. CIG is keenly aware of the importance of the Cayman Islands' natural environment, both to the Islands' heritage and indeed to their ongoing appeal as a tourist destination. It was the Progressives who sponsored the enactment of the National Conservation Law in 2013, which imposed new, substantive obligations on administrative decision-makers to protect the environment.
9. CIG has been and will remain vigilant to ensure that the Project's environmental impact is kept to the very minimum possible. Since the Project was launched in 2013, extensive consultations have been held with the DOE and a comprehensive environmental impact assessment ("EIA") study was commissioned by CIG, as follows:
- a. CIG launched the Project by producing a Strategic Outline Case ("SOC") in April 2013. This document, which was produced in-house, outlined the information known at the time relevant to the Project's anticipated merits, the possible options for its implementation and the associated risks, including risks to the environment.

- b. CIG then engaged PricewaterhouseCoopers to produce an Outline Business Case (“OBC”), which included a Concept Study conducted by Mott McDonald. These reports were published in October 2013.
- c. A draft Terms of Reference (“ToR”) for an EIA was also produced by Mott McDonald, and a public meeting was held on the draft ToR in November 2013. The Department of Environment (“DoE”) played a significant role in the development of the ToR for the EIA.
- d. Based on public feedback, a final ToR for the EIA was published in December 2013. Following a competitive procurement process, the CIG selected Baird in March 2014 to conduct the EIA study and prepare an Environmental Statement (“ES”). CIG also convened an Environmental Assessment Board (“EAB”) to oversee the completion of the EIA study. The Director of the DoE chaired the EAB.
- e. Baird completed the EIA study between June 2014 and September 2015. Within that 16 month time frame, there were numerous meetings and extensive dialogue between Baird and the DoE concerning two EIA Interim Reports, a draft and final draft of the ES, and a draft Non-Technical Summary (“NTS”) of the EIA study.
- f. In June 2015, a four-week public consultation period was held to solicit comments on the EIA study, as documented in the final draft ES and NTS; this included a public meeting.
- g. The EAB reviewed the Final Draft ES and NTS. In addition, the National Conservation Council (“NCC”) provided commentary on the EAB review. The EIA study concluded that Seven Mile Beach was not at risk from the proposed development. The EAB agreed with this conclusion.
- h. In September 2015, Baird produced the Final ES and NTS, including consideration of the EAB, NCC and public review comments; Baird also produced a separate report entitled Preliminary Scoping of Possible Mitigation Measures. The DoE, as well as the National Museum (“NM”) and the Department of Tourism (“DoT”) provided comments on the

latter document. Baird provided a follow-up report responding to their comments in May 2016, as noted in Item j.

- i. In October 2015, Cabinet considered the EIA and provided provisional approval, the proviso being that the layout of the new facility would be revisited in order to consider whether the piers could be placed in deeper water to reduce dredging and reduce the associated environmental impact (despite the increased costs).
- j. In December 2015, Baird produced a series of possible EIA layout modifications that placed the piers in deeper water, reduced dredging and caused less environmental impact. The DoE provided comments on these proposed modifications in March 2016, including a question about the need to update the EIA study to reflect a project layout in deeper water. In May 2016, Baird produced a report that responded to these comments, as well as to the DoE, NM and DoT comments on the mitigation measures report (refer to Item h). This report also provided Baird's opinion regarding the requirement to update the EIA study to reflect a revised project layout in deeper water (of note, this information has been incorporated in the EIA Scoping Update that Baird is presently preparing for the revised project layout proposed by VIPP).
- k. In June 2016, the CIG selected Royal Haskoning DHV (RHDHV) to progress the project design using the Baird modified layout that provided the best balance between environmental impacts and project functionality. RHDHV was also engaged to produce an Outline Dredge Management Plan ("DMP") and Interim Coral Relocation Plan ("CRP").

10. The steps described above are summarized in Table 1.

TABLE 1			
EIA Stage	Date	Author	Document Title
1	Apr. 2013	CIG	Strategic Outline Case (SOC)
1	Oct. 2013	MM	Concept Study
1	Oct. 2013	PwC	Outline Business Case (OBC)
2	Oct. 2013	DOE	Screening Opinion
3 (i)	Oct. 2013	PWC/MM	Scoping report submitted to EAB/DOE for review

3 (iii)	Nov. 2013	CIG/MM	Public Meeting to present Draft Terms of Reference
3 (iii)	Dec. 2013	CIG/MM	Final EIA Terms of Reference
3 (ii)	Mar. 2014	CIG/DOE	Selection of Baird as preferred EIA consultant
4	Jun. 2014	Baird	EIA Interim Report 1
4	Aug. 2014	Baird	EIA Interim Report 2
4	Aug. 2014	DOE	Comments on EIA Interim Report 2
5(i)	Feb. 2015	Baird	Draft ES
5(i)	Feb. 2015	DOE	Comments on Draft ES
5(i)	Mar. 2015	Baird	Revised Draft ES and NTS
5(i)	Apr. 2015	DOE	Comments on Draft ES and NTS
5(iii)	Apr. 2015	Baird	Draft EMP
5(i)	Jun. 2015	Baird	Final Draft ES and NTS
5(i)	Jun. 2015	Baird/CIG	Public Consultation (Jun. 4 - Jul. 3, 2015)
5(i)	Aug. 2015	EAB, NCC	EAB Review of Final Draft ES and NTS and NCC Commentary on EAB Review
5(ii)	Sep. 2015	Baird	Final ES and NTS
5(iii)	Sep. 2015	Baird	Scoping of Possible Mitigation Measures
1	Sep. 2015	PwC	Draft Addendum to Outline Business Case
5(iii)	Oct. 2015	DOE, EAB	Comments on Possible Mitigation Measures
6	Oct. 2015	CIG	Cabinet Approval of EIA
4	Dec. 2015	Baird	Possible EIA Layout Modifications
4	Mar. 2016	DOE	Comments on Possible EIA Layout Modifications
5(iii)	May 2016	Baird	Response to Comments on Possible Mitigation Measures and EIA Layout Modifications. DOE acknowledge comments but no response required.
5(iii)	June 2016	RH-DHV	Design progression including draft Dredge Management Plan and Coral Relocation Plan.

11. CIG's Invitation to Submit Final Tenders ("ISFT") included the revised project layout, Outline DMP and Interim CRP developed by RHDHV.

12. The tender design submitted by VIPP includes additional refinements to further reduce dredging and adverse impacts on the marine environment, meets the requirements of the Outline DMP and exceeds the requirements of the Interim CRP.

13. Throughout the processes set out above, CIG has sought in good faith to act in a careful and responsible manner as good stewards of the environment by utilizing the technical experience of world class environmental experts and the DoE, and by taking into account the feedback of the public. It will continue to do so.

#### **Opposition to the Port Project**

14. Those who voiced opposition to the Project at the EIA consultation stage did so on the basis of concerns about the Project's potential impact on the marine environment of George Town Harbour and Seven Mile Beach, and concerns about the loss of watersports and tender boat jobs around the George Town Harbour.

15. After the consultation, and outside of the Legislative Assembly, organised opposition to the Project came initially from a group calling itself 'Concerned Caymanians', who threatened legal action in November 2015 (SB3/[174-6]), and then from a group called 'Save Cayman' (SB3/[106-7]). More recently, the Project has been opposed by CPR Cayman, which was registered as a non-profit organization on 2<sup>nd</sup> August 2019. The National Trust of the Cayman Islands also opposes the Project. CPR Cayman's publicity materials and website indicate that they oppose the Project primarily on environmental grounds. However, according to press reports, at least one co-owner of a tender boat operator, Adrien Briggs, has committed personal funds of up to CI\$100,000 to groups including CPR Cayman who oppose the Project (SB3/[25]). Mr. Briggs is on record as saying his company "...*would be out of the business*" if the Project proceeds (SB3/[29] and [218-9]). So it seems that the opposition might to some extent be motivated by private commercial considerations.

16. CIG is mindful of the concerns of those who oppose the Project. However, it does not share their conclusion that the projected environmental impact demands the Project's abandonment. For reasons explained above, the environmental impact is expected to be less than the impact envisaged in the 2015 EIA. The mitigation measures have been refined

through the procurement process and will be more effective. CIG relies on the submissions of the environmental experts who have been engaged by the Preferred Bidder. See SB1/[34].

17. CIG appreciates, however, that this is not the end of the process as regards to the assessment of environmental impact, and remains of the view that protection of the environment is a key responsibility. Baird should, very soon, complete a new Scoping Update document designed to assess whether, in light of the changes to the Project's design referred to above, a new EIA needs to be commissioned. The Scoping Update will be referred to the EAB, which is expected to report in January 2020. CIG will obviously take the results of these exercises into account going forwards. There will also need to be further steps to complete the regulatory approval process. In short, environmental effects and considerations will be kept under review throughout the Project.

### **Procurement**

18. In October 2015, following the environmental impact assessments and consultation exercises described above, CIG took the decision to move forwards to the design and procurement phase of the Project. From 2015 to 2018, those phases proceeded as follows:
- Progression of Project design: July 2016 to Mid-2017
  - Drafting of Outline Dredge Management Plan: July 2016 to Mid-2017
  - Drafting of Interim Coral Relocation Plan: July 2016 to Mid-2017
  - Commencement and progression of the Procurement Process: May 2017 to present
19. CIG's Invitation to Submit Final Tenders included the revised project layout, Outline DMP and Interim CPR developed by RHDHV (see paragraph 9(l) above). The tender design submitted by the Preferred Bidder (VIPP) includes additional refinements to further reduce



dredging and adverse impacts on the marine environment, meets the requirements of the Outline DMP and exceeds the requirements of the Interim CRP.

20. CIG is in the final stages of negotiating agreements with the Preferred Bidder to cover both necessary pre-construction steps (including outstanding environmental studies and surveys) and the actual design, building, financing and ,maintenance of the cruise ship and cargo port facilities. However, those negotiations are now on hold pending the outcome of these proceedings
21. Details of the next steps in the procurement and environmental surveys process, and the risks of delay are set out in detail in paragraphs 7 to 12 of my 1<sup>st</sup> Affidavit.
22. The government has expended considerable sums on environmental impact assessment, consultation, design, procurement, and public information about the Project (including the Brochure exhibited at "SB1"). The costs of consultancies to produce the outline business case, environmental impact assessment, progress the project design, and the procurement process to date is approximately CI\$9M.

### **The Petition for a Referendum**

23. The Opposition in the Legislative Assembly initially requested during September 2018 that CIG hold a referendum on the Project but CIG refused. In or before September 2018, opponents of the Project started collecting signatures towards a people initiated referendum under s. 70 of the Constitution, which requires 25% of registered electors to sign a petition calling for a referendum. This target was apparently reached, and the petition was submitted to CIG on 12<sup>th</sup> June 2019. CIG then commenced verifying the signatures to ensure that only registered Caymanian voters were counted, as the majority of residents are not registered voters. It undertook this process as quickly and efficiently as

practicable. CPR Cayman threatened to seek judicial review of CIG's approach to verification; however, verification was completed before this threat materialized.

24. Once the requisite number of signatures had been verified, CIG commenced the prescribed legislative process to enable the referendum to be held. These steps are addressed in the 2<sup>nd</sup> Affidavit of Samuel Bulgin.

**The nature and profile of the "no" campaign**

25. While there are no officially designated "yes" and "no" campaigns, there has been campaigning on both sides. In addition to the CIG, groups who have been vocal in support of the Project include a group called "Cayman's Port. Cayman's Future." On the other side, CPR Cayman has run an energetic and highly visible campaign. There has been extensive commentary in all types of local media on numerous platforms featuring opponents of the Project, as well as advertisements on social media including YouTube and Instagram. I understand that BBC World News and Netflix have also been invited to the Cayman Islands by CPR Cayman to investigate the Project. BBC News reported on the story on 4<sup>th</sup> December 2019 (SB3/[11-22]).
26. I cannot say what impact the opponents' campaign has had on voting intentions, but the atmosphere in the public space has become increasingly vitriolic and antagonistic. For example:
- a. Jean-Michelle Cousteau (son of Jacques), who was enlisted by CPR Cayman in support of their campaign, opined that the government had done a good job with its 2015 EIA (see SB3/ [6-10]). He was subsequently subjected to a barrage of online abuse, including claims that he disgraced his family name.

- b. Mario Rankine, a vocal opponent of the Project, had the tyres on his vehicle slashed outside an anti-port public meeting in November 2019. See SB3/[23-4].

27. My impression is that people are now increasingly afraid to speak out on the record for or against the Project. Caymanian society has become increasingly polarized. The Government's position is that the referendum needs to take place as soon as possible, apart from anything else so that the poison can be drawn from the public discourse.

**Comments on aspects of the National Trust's Statement of Case**

28. I am advised and believe that the environmental merits of the Port Project are not the issue in these proceedings. But I should correct or qualify some misleading statements that appear in the NT's statement of case.

29. I have seen the 'Statement of Grounds for Judicial Review of Intervening Party' filed and served by the National Trust in these proceedings after my first affidavit, and make the following observations thereon:

- (i) At paragraph 16, it states that 820,000 cubic yards will be dredged from George Town harbour. This is incorrect. The correct figure is 235,090 cubic meters.
- (ii) Regarding para. 17(1), the protected area will be changed to accommodate the Project.
- (iii) Regarding para. 18(1), there is a roughly US\$12 million plan to relocate some rare coral over 6 months.
- (iv) Regarding para. 18(2), it should be noted that the wreck of the *Balboa* was blown up in 1957 because it posed a navigational hazard to shipping.

- (v) Regarding para. 18(3), mechanical dredging will be used in the DBFM contract and the dredger will be moved to a new site if sedimentation reaches a hazardous level.
- (vi) Regarding para. 23(4), the 473 written submissions could have come from anywhere in the world, not just the Cayman Islands.
- (vii) In respect of paras. 30, 31 and 32(3), the government could not undertake any further environmental studies or mitigation methodology work until the final design was detailed. The tender process concluded and was made public on July 29<sup>th</sup>, 2019. Since then, the government has held 6 public meetings on the Project.
- (viii) Regarding para. 33(3)(iii), CSA were working on another project in the Cayman Islands and had been vetted by the Department of Environment at the time. It therefore made sense to ask them to undertake this work, as they had the necessary equipment (including a side-scan sonar) on Grand Cayman already.
- (ix) Paragraph 34(5) is not admitted. I have no recollection of giving such instructions.
- (x) Regarding paras. 36 and 37, the Pre-Qualification Questionnaire was sent out to interested companies in May 2017. Our procurement consultants, KPMG, were appointed in early 2017. The enlargement of the cargo port has been a part of the Project since 2015 - see the Premier's announcement to the Chamber of Commerce at SB3/[177-180].
- (xi) Regarding para. 40, there is no 'conditional' agreement. The contract has not yet been concluded.

- (xii) Regarding para. 42(3), there was extensive public consultation between 2013 and the publication of the EIA in 2015. All relevant documents are available on the Department of Environment and Support Our Tourism websites.
- (xiii) Regarding para. 42(4)(1), I am not aware that this was not done.
- (xiv) Regarding para. 42(4)(iii), VIPP are partnered with Polaris Applied Science and Sea Ventures, both world renowned companies in the coral relocation field.
- (xv) Regarding para. 42(4)(iv), we focused on saving the most endangered corals.
- (xvi) Regarding para. 42(5), we decided to use a mechanical dredger due to its lower risk of sedimentation, even though this would take more time than using a hydraulic dredger.
- (xvii) In respect of paragraph 43, nowhere in the brochure are readers urged to vote in favour of the Project. It is entirely neutral and was produced to inform the public about the revised VIPP port design.
- (xviii) Regarding para. 44, our plan is to proceed with the next steps following on from the 2015 EIA, initially with a Scoping Update currently being finalized.
- (xix) Regarding para. 54, the government has complied with this duty.
- (xx) Regarding paras. 55 and 56, civil servants cannot take sides but elected representatives will promote the government's policies. See the memorandum dated 25th October 2019 from the Deputy Governor to all Civil Servants and employees of statutory authorities and government owned companies regarding their duties and participation in the referendum campaign at SB3/[100-102]. Cabinet members have

answered technical questions to the best of their ability, have encouraged public debate, and in addition to 6 public meetings have also met with the Chamber of Commerce and the Cayman Islands Tourism Association.

(xxi) The assertions at paras. 59(2) and (3) about the past success and reputation of Polaris Applied Science are simply incorrect. Polaris Applied Science is world renowned and has successfully relocated coral in Grand Cayman.

Sworn at George Town        )  
Cayman Islands                )  
This 31<sup>st</sup> day of December 2019    )



**STRAN BODDEN**

Before Me:



NOTARY PUBLIC/JUSTICE OF THE PEACE



SAMUEL ROSE  
Justice of the Peace

ID# SR170413

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Defendants

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(1) NATIONAL TRUST FOR THE CAYMAN ISLANDS

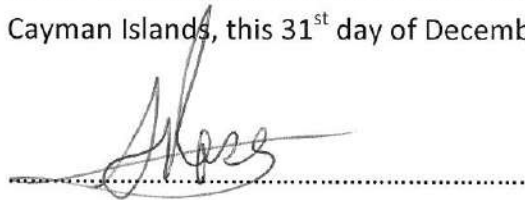
Intervener

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SECOND AFFIDAVIT OF STRAN BODDEN

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This is Exhibit SB3 to the Second Affidavit of Stran Bodden sworn before me at George Town,  
Cayman Islands, this 31<sup>st</sup> day of December 2019.



NOTARY PUBLIC/JUSTICE OF THE PEACE



**SAMUEL ROSE**  
Justice of the Peace

ID# SR170413