

2.0 APPLICATIONS
APPEARANCES (Items 2. 1 to 2. 7 & 5. 1)

**2.1 MINISTRY OF D.A.T&T Block 33M Parcel 45 (F18-0358) (P18-0905)
(\$60,000) (BES)**

Application for public restrooms.

Appearance at 10:30

FACTS

<i>Location</i>	Starfish Point, Rum Point
<i>Zoning</i>	LDR/LPP
<i>Notice Requirements</i>	Objectors
<i>Parcel Size</i>	22,215.6 sq. ft. or 0.51 acre
<i>Existing Use</i>	Vacant
<i>Proposed Use</i>	Public Rest Rooms
<i>Building Size</i>	525.3 sq. ft.
<i>Total Site Coverage</i>	2.4%
<i>Proposed Parking</i>	11
<i>Required Parking</i>	CPA discretion

Recommendation: Discuss the application **for the following reasons:**

1. Regulations 14(2), 9(5) and 28 of the Development and Planning Regulations (2018 Revision).
2. Designation of parcel as LPP.
3. Objectors concerns.

AGENCY COMMENTS

Comments from the National Roads Authority, Water Authority, Department of Environment, Water Authority and Chief Environmental Health Officer are noted below.

National Roads Authority

“As per your memo dated September 14th, 2018 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.

The NRA has no objections or concerns regarding the above proposed development.”

Department of Environment

“Under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Law, 2013), the Department of Environment

offers the following comments for the consideration of the Central Planning Authority.

Having reviewed the above mentioned application, the DOE would recommend that the proposed conventional toilet systems with septic tank and deep well disposal are replaced with composting toilets. The reasoning behind this is that deep well disposal near to the coast could cause pollution of the marine environment through leaching of nutrients etc. whereas composting toilets would minimise water use and the requirement for waste disposal into the ground. The Department would also note that composting toilets are operational at a number of similar visitor facilities around Grand Cayman. Increasing the coastal setback of the toilet and shower facilities would also help to minimize potential impact on the marine environment.”

Water Authority

“Please be advised that the Water Authority’s requirements for this development are as follows:

Wastewater Treatment & Disposal

- The developer shall provide a septic tank with a capacity of at least (1,500) US gallons for the proposed. The septic tank shall be constructed in strict accordance with the Authority’s standards. Each compartment shall have a manhole to allow for inspection and service. Manholes shall extend to or above grade and be fitted with covers that provide a water-tight seal and that can be opened and closed by one person with standard tools.*
- Treated effluent from the septic tank shall discharge to an effluent disposal well, constructed by a licenced driller in strict accordance with the Authority’s standards. Licenced drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.*
- To achieve gravity flow, treated effluent from the septic tank shall enter the disposal well at a minimum invert level of 4’4” above MSL. The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well, which fluctuates with tides and perching of non-saline effluent over saline groundwater.*

Water Supply

The proposed development site is located within the Water Authority’s piped water supply area.

- The developer shall contact Water Authority’s Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the public water supply.*
- The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- The developer shall install the water supply infrastructure within the site, under the Water Authority’s supervision, and in strict compliance with the*

approved plans and Water Authority Guidelines for Constructing Potable Water Mains.

The Authority shall not be held responsible for delays and/or additional costs incurred by the developer due to the developer's failure to provide sufficient notice to the Authority."

Chief Environmental Health Officer

"The proposed location and size of the garbage enclosure is unsatisfactory. The applicant can set up a meeting with DEH to discuss. The site requires an 8 cubic yard container with once per week servicing."

OBJECTIONS

Letter #1

"We act for Kaimera Ltd., the owner of the neighbouring property legally described as Rum Point Block 33M Parcel 32.

We are instructed by our client to lodge the following objections to the Application:

1. *The proposed development will be in direct and actionable breach of the restrictive covenants encumbering the registered title to the Property.*

The Property lies within a scheme of development generally known as and referred to as Cayman Kai, pursuant to the Order for the Hon. Justice Sanderson of the Grand Court dated 14 October 2005 (the "Order"), a copy of which is enclosed. The Schedule to the Order sets out the restrictive covenants (the "Covenants") to which the Property is subject, which is further evidenced by the Incumbrances Section of the Land Register for the Property, also enclosed.

As an owner of property within Cayman Kai, our clients are entitled to (and will if required) enforce the Covenants in the event of any actual or proposed breach of the same which would be occasioned by the Application, namely Covenants 1 Committee) and 3 (parking outside of an approved garage).

Until such time as the breaches of the aforementioned Covenants are remedied, the proposed development described in the Application remains in breach of an Order of the Grand Court and should therefore be rejected on that basis alone.

2. *The proposed development would be in breach of the Development and Planning Regulations.*

The Land Register for the Property records that it has been designated as Lands for Public Purpose ("LPP"). Pursuant to Section 28 of the Development and Planning Regulations (2018) (the "Regulations"), this "public" designation is to be construed as "in relation to a subdivision, means landowners within the subdivision", i.e. not the general public.¹ However, the proposed development of a public toilet and parking facilities on the Property appears to be specifically designed for the use of the general public, not for

the neighbouring landowners within Cayman Kai, in breach of the Regulations.

Further and additionally, LPP designated properties also fall within the categories of land included within Public Open Space zones. Pursuant to Section 17(3) of the Regulations, the Central Planning Authority ("CPA") may only permit a development which (a) "is compatible with the character and function of the zone" and (b) ... "are directly associated with, and promote, the principal purposes and actual use of the zone". The proposed development on the Property satisfies neither requirement, nor does it satisfy the considerations set out at Section 17(4) which the CPA is duty

3. *The proposed development will exacerbate existing nuisances and other breaches of our client's property rights.*

The owner of the Property exerts no noticeable control on visitors to the Property, as a result of which our client suffers the nuisance of excessive noise and refuse created by visitors to the Property, often at all hours of the day.

Further, it does not appear that entry to the proposed development would be controlled by reference to a gate, or that use of the Property would be restricted to sociable hours during the day. This encourages anti-social activity in and around the proposed restroom building on the Property.

Despite this, the owner of the Property is taking no steps to prevent such nuisance and is now proposing development which will only exacerbate these issues by encouraging greater numbers of people to frequent the Property due to the proposed establishment of permanent facilities and parking.

4. *The proposed development would encourage further trespass onto neighbouring private land.*

The lack of control over the Property's boundaries also appears to have encouraged trespassers onto our client's property, who have caused damage to our client's property by cutting down boundary ropes, pushing down fencing posts and also by damaging the trees on our client's property, with further noise and unlawful littering as a consequence. The Property is also currently utilised by visitors for access to and egress from the adjacent private parcel of land which leads to Starfish Point (the "Starfish Point Parcel"). We are not aware that there are any formal rights documenting public access to the Starfish Point Parcel, and so the proposed development is essentially unnecessary given it would serve no other designated public space and only facilitates use of the Starfish Point Parcel.

5. *The proposed development will contribute to the environmental degradation of the natural resources of the surrounding area.*

The area of Cayman Kai and Starfish Point is subjected to increasing and unsustainable numbers of visitors which the proposed development will exacerbate, without the benefit of appropriate controls. Residents of the area have noted a disappearance of marine life over the last 2 years and a

significant reduction in the numbers of starfish in the waters. The increased activity on the Property and surrounding parcels is undoubtedly the cause of this. The proposed development on the Property will, by allowing increased numbers of visitors for longer periods, intensify the strain on the land and waters in this area and accelerate the damage to the natural environment.

The proposed development of the Property is also at odds with various tenets of the Development Plan 1997, including but not limited to the need to preserve beach ridges and control the spreading of litter and considerations around the protection of water lenses from contamination by sewage.

We would therefore expect that an environmental impact assessment should be required by the National Conservation Council before any development of the Property could be considered.

Our client reserves the right to make further objections to the Application, in addition to its rights generally, all of which are reserved in full.

We would be grateful if this letter and its enclosures could be provided to and formally lodged with the CPA.”

Letter #2

“I wish formally to lodge my objection to the application for planning permission to build a public restroom at Rum Point Block 33M Parcel 45 (“the Site”). This is on the following grounds:

- 1. This proposal is out of character with the low-density residential area.*
- 2. The Site is called a Public Beach but it did not use to be a Public Beach and it is not a suitable location for a Public Beach. Residents were never informed that the land was acquired by Government and was to be transformed into a Public Beach and most residents are baffled as to when and how this happened. This has contributed to a feeling of uncertainty about the area and about the reliability of investments in land.*
- 3. The Property is extremely small and inadequate in size to be a public beach. It is in fact used only as a car park for accessing starfish point, which is a private land and which should not be the reason for accommodating its visitors.*
- 4. There is already a Public Beach in the Kai, just at the other end of the access road and only half a mile away.*
- 5. We and our neighbours in the area suffer the consequences of unchecked public use of the Site already. This takes the form of: loud music; noise from cars parking/revving their engines, car doors closing, car engines running (to keep the air conditioning working), etc.; refuse being dumped on our properties or blowing into our properties from the Site; trespass by the public on our properties and theft from our properties by persons gaining access from the Site; fires being lit; beer bottles being thrown or left on our properties; trees and fencing on our properties being damaged by the public; the glare of sunlight off cars parked on the Site. The owners of the Site make*

no attempt to supervise, manage or reduce all this antisocial activity or to encourage visitors to the Site to behave in a respectful and considerate manner towards the residents of the properties neighbouring the Site. Providing facilities on the Site will only encourage further traffic to the Site and exacerbate this anti-social activity by increasing the numbers of persons visiting the Site and using it in an indiscriminate manner.

- 6. We do not know what provision the owners of the Site intend to make for safety and security and to ensure that the proposed public restroom and car park are not utilised improperly for overnight stays, illicit activity and the like. We do not want anti-social and immoral behaviour to be accommodated, facilitated and encouraged on the Site and we are of the view that this building project will do precisely that.*
- 7. The area of Cayman Kai and Starfish Point is appreciated for its natural state. The area is already suffering on account of the significant increase in traffic to what is, essentially, a small and private site. It has been noticed, for example, that the number of starfish has significantly decreased in the last four years and that the vegetation on the Site or surrounding area has either been cleared to make way for cars or has disappeared because of the effect of increased traffic. The area is being placed under undue strain and it is irresponsible to allow more. Building a public toilet, an outdoor shower (where people use shower gels and shampoos) and encouraging parking will further damage the natural environment and adversely impact this area's unique natural attributes, which should be protected instead of being exploited.*
- 8. The Site has numerous casuarina trees. Although they are not native to Cayman, they provide shade and a lush character to the site. They also act as storm barriers, decrease flooding and filter the pollution of cars (light, noise and fumes). As construction will likely not allow these trees to be retained on the site, what steps have been taken to replace them?*
- 9. The Site plan indicates that parking spaces will be allowed within the side setbacks. This prevents vegetation to obscure cars and shows a lack of consideration for the residents of adjacent plots.*
- 10. We are concerned that the tank and sewage treatment will not comply with regulations and will not be well maintained, resulting in foul waste smells and pests.*
- 11. As the traffic demands generated by this public beach is already having a detrimental impact on residents, we are concerned that facilitating its access will only increase traffic further. The Water Cai Road is only an access road and it does not have the capacity to take this increased traffic. It also raises safety concerns (speeding cars and burglaries).*
- 12. Inevitably the construction of parking spaces and of a public toilet will reduce the marketability of the area, especially for the adjacent plots where owners intend to build high-end villas for the rental market. Encouraging*

transportation to this area is an inefficient approach to the development of luxury tourism.

13. *We note some irregularities in the process of the application: 1) it is unclear when the notification was sent since the envelope is stamped with three different dates (19th, 20th and 21st September 2018), and 2) the Drawing by Tropical Architectural Group Ltd is dated 28 September 2018, which means that it was drawn at least one week after the notification was posted and not available for consultation at Planning.”*

Letter #3

“As a resident of Cayman Kai (and on Water Cay Road), I am writing to formally log my objection to the public restrooms planned adjacent to Starfish Point. Not only will the unnecessary permanent restrooms created additional (detrimental) traffic but will provide incentive and shelter to a spot that is already littered with alcohol and drug waste (can, bottles small plastic baggies, marijuana rolling paper and addition to the area). The restroom promotes increased traffic and has even more negative impact on the environment but also on security and road traffic. Tourists and Tour Operators now come in large number by party boats, speeding cars and even buses, often with the only purpose of taking selfies with the starfish, which are fast disappearing. Us neighbors often joke that Starfish Point should be renamed Starfish Cemetery but the truth is this is very sad. Facilitating transportation to Starfish Point can only worsen the situation and impact negatively on the area.”

Letter #4

“I, James b. Brannon, property owner of Block and Parcel 33M 31, would like to state that I did not receive the official notice of the Proposed Public Restrooms for Northside Starfish Point until today, October 17, 2018. We have been informed by our lawyer that although the period for objection may have already closed, we can still object as long as we are in support of the existing objections, as stated in the attachment. Please see the attached objection. We wait to hear your response and request that any further correspondence be sent to us via this email as well as by mail.”

Letter #5

“We live 3 properties from Starfish point. For all the reasons listed from other home owners, we too object to your plans.”

Letter #6

“As land owners on Water Cay Rd. (Lot 33M 29) we strongly object to any public beach development due to the fragile and overly taxed ecosystem. Allowing boatloads of tourists to descend upon Ivory Point is wrong is absolutely wrong on so many levels. We strenuously object to this plan.”

Letter #7

See Appendix “A”

PLANNING DEPARTMENT ANALYSIS

General

The application is for public restrooms (525.3 sq. ft.) located at the above captioned property. The site is located at Starfish Point, Rum Point.

Zoning

The property is zoned Low Density Residential/Land for Public Purposes.

Specific Issues

a) Regulation 14(2) and Regulation 9(5)

In accordance with Regulation 14(2) which states that. *“Subject to any other provision of the Law and these Regulations religious institutions, social and educational development including recreational facilities and public and civic buildings are permissible in any zone where they meet the needs of the community.”* As noted above in the said Regulation, the Authority needs to ascertain whether or not the proposal meets the needs of the community. It should be pointed out that the subject property was used as a public beach use for several years.

Additionally, the Authority needs to consider whether the proposal would be dangerous, obnoxious, toxic or cause offensive odours or conditions or otherwise create a nuisance or annoyance to others as mentioned in Regulation 9(5) of the Development and Planning Regulations (2018 Revision) - as noted above the subject property is zoned LDR zone with an overlay zone Land for Public Purposes (LPP).

b) LPP

Regulation 28 states that the Authority may...allow land...for public purposes, including active and passive recreation and public rights of way. The subject property is zoned Low Density Residential (LDR) with an overlay LPP zone.

c) Objectors Concerns

The Authority needs to determine whether or not the objectors have addressed the Development and Planning Regulations concerning the above proposal.