



12th November 2019

Cayman Islands Government
General Administration Building
133 Elgin Avenue
PO Box 907
Grand Cayman KY1-1103

For the attention of: His Excellency the Governor, Martyn Roper OBE
The Premier, Hon Alden McLaughlin Jr. MBE JP MLA
The Leader of the Opposition, Hon Arden McLean JP MLA
The Attorney General, Hon Samuel Bulgin QC
The Elections Supervisor, Mr Wesley Howell

Dear Sirs & Mesdames

**THE REFERENDUM (PEOPLE-INITIATED REFERENDUM REGARDING THE PORT) LAW 2019 (“Law”)
THE REFERENDUM (PEOPLE-INITIATED REFERENDUM REGARDING THE PORT) (REFERENDUM
QUESTION) REGULATIONS 2019 (“Regulations”)
RERERENDUM (PEOPLE -INITIATED REFERENDUM REGARDING THE PORT) (REFERENDUM DAY)
NOTICE, 2019**

1. This letter is written in anticipation of an application for Judicial Review and pursuant to Order 53 of the Grand Court Rules and Practice Direction 4 of 2013.
2. The Applicant (“Trust”) is the National Trust for the Cayman Islands, a corporate body established pursuant to the National Trust Law (2010 Revision) mandated under that law to protect and preserve the historic, natural and maritime heritage of the Islands and the protection of native flora and fauna.
3. The Trust seeks the agreement of the Cayman Islands Government (“CIG”) to defer (i) the holding of a referendum pursuant to the Law and Regulations and (ii) the commencement of any substantive works in connection with the construction of the Cruise Berthing Project, until such time as:
 - 3.1. All necessary studies on the impact of the revised design of the Cruise Berthing Project on coral reefs, including the long-term viability of proposals for coral relocation or restoration, have been carried out and the resulting reports made publically available in full;



- 3.2. That the Environmental Impact Assessment (“EIA”) be updated to take into consideration the revised design and that it may be considered in full by the Environmental Assessment Board (“EAB”), an empaneled committee of the National Conservation Council, and the full report thereof made publically available per the EIA Directive 2016;
- 3.3. As part of the EIA Terms of Reference, a comprehensive study on the feasibility and environmental and ecological impact of the proposed relocation of the wrecks of the Balboa and the Cali has been carried out and the report thereof made publically available in full.
4. In default of such agreement by no later than close of business on 20 November 2019 the Trust will apply to the Court for Orders restraining the CIG from proceeding with the referendum or any works until such time as the conditions above have been met.
5. The Trust has taken advice from Leading Counsel to the effect that:
 - 5.1. The Trust has a legitimate interest in this matter in view of its statutory purposes as set out in section 4 of the National Trust Law, including the preservation of the historic, natural and maritime heritage of the Islands and the protection of native flora and fauna.
 - 5.2. The CIG is under the following obligation pursuant to section 18 of Schedule 2 Part 1 of the Cayman Islands Constitution Order:

“(1) The Government shall in all its decisions have due regard to the need to foster and protect an environment that is not harmful to the health or well-being of present and future generations while promoting justifiable economic and social development.

(2) To this end, the government should adopt reasonable legislative and other measures, to protect the heritage and wildlife, the land and sea biodiversity of the Cayman Islands that...promote conservation and biodiversity.”
 - 5.3. The National Conservation Law (“NCL”) 2013 establishes a National Conservation Council which may require certain developments likely to have an adverse impact on a protected area, the critical habitat of a protected species, the environment generally or on any natural resource to be subject to the prior preparation of an EIA pursuant to Section 43 of the NCL.



5.4. As set out in the Trust's various press releases and most recently that issued on 31 October 2019:

5.4.1. The EIA prepared in respect of the Cruise Berthing Facility is out of date, in that it was prepared in relation to a previous and different design to that which is now proposed, and its authors are no longer independent, having been retained as members of the Verdant Isle consortium. In the circumstances, there is and will be no relevant, perceived independent EIA in respect of the Cruise Berthing Project which is the subject of the proposed referendum.

5.4.2. The EIA which was prepared in respect of the previous design concluded that significant areas of coral reef would be affected.

5.4.3. The necessary data collection for studies on the likely impact of the revised design on the coral reefs and the viability of the proposals for relocation or restoration of the coral reefs is not intended to commence until March 2020, long after the proposed referendum date.

5.4.4. Similarly, studies necessary to assess the feasibility of proposals to relocate the historic shipwrecks of the Balboa and the Cali will not be published in time for the referendum.

5.5. The CIG's duty under section 18 of the Constitution to have regard to the need to protect the environment is a mandatory one. While it is accepted that section 18 requires the CIG to perform a balancing exercise, in order to do so it must have the necessary information available to it. The CIG must properly inform itself of the relevant environmental issues before it can carry out its duty under section 18 and decide whether to proceed with the development. Any decision in principle taken by CIG to proceed with the Cruise Berthing Project in the absence of all relevant environmental information would be invalid.

5.6. Similarly, the general public cannot make an informed decision in the referendum until such time as all of the necessary information has been made publically available. For the CIG to proceed with the referendum before doing so is irrational and inconsistent with its obligation under section 18.

6. As CIG is no doubt aware, Cruise Port Referendum, advised by Broadhurst attorneys, has also raised challenges to the proposed referendum albeit on different grounds, and should be regarded as an interested party. We have copied this letter to Broadhursts.



7. Practice direction 4 of 2013 provides that a period of 14 days should ordinarily be allowed for a response before the issue of proceedings in Judicial Review cases. In the circumstances of this case however, with the referendum having been set for 19th December 2019, we do not consider there is sufficient time available to allow 14 days for a response, and request your reply by no later than close of business on 20th November 2019.
8. If you have any queries in respect of the matters set out above, or wish to discuss this matter, please contact the writer.

Yours faithfully

On behalf of the National Trust for the Cayman Islands

A handwritten signature in black ink, appearing to read "Nadia Hardie".

Nadia Hardie
Executive Director

cc: Kate McClymont, Broadhurst Attorneys