



OFFICE OF THE
PREMIER
CAYMAN ISLANDS GOVERNMENT

NRA 3rd Amendment statement

By Premier Hon. Alden McLaughlin, MBE, JP, MLA

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Madam Speaker, I wish to lay a copy of the third amendment to the agreement between Dart Realty, the National Roads Authority and Government, as well as provide the House with a report on the main improvements to the original agreement.

Madam Speaker, the original NRA Agreement was executed in December 2011 under the UDP administration led by the now Leader of the Opposition and in the main included the extension of the Esterley Tibbetts Highway to West Bay, the development of Kimpton's Seafire Resort and Spa on the property of the former Courtyard Marriott, which had been closed since 2008, as well as various other developments by Dart Realty and the closure of a section of West Bay Road, as well as the realignment of the old Barkers Road. It also included various concessions for the development of new hotels as well as amenities for government and Cayman residents. And lastly it included the 50 per cent of the hotel room tax concession with all Dart hotels. This final aspect of the agreement was contentious.

A subsequent amendment in April 2012, which was termed the first amendment, extended the period for the completion of an independent value for money review of the agreement, which was required under the law.

A second amendment was executed in July 2012 and did the following things:

- It brought in the concept of a new public beach in place of future public rights of way through Dart properties to the beach, such rights arising by law upon the grant of Planning consent. This will ensure that Dart can develop its beachfront land without having to facilitate providing public beach access from the public road.
- It removed from the agreement the realignment of the gazetted corridor from Pappagallo to the head of Barkers, which was included in the original agreement. This has been deferred until and if Dart gains consent to develop its land in Barkers, should it wish to.
- It set aside three acres for the future development of a new Sunrise Adult Training Centre and 20 acres in West Bay for educational and community use.

To meet the legal requirements under the Framework for Fiscal Responsibility, Price

Waterhouse Coopers was selected through tendering as the independent consultant to conduct a value for money review on the original agreement and the second amendment. This review concluded that value for money in the agreement was a mixed bag and specifically pointed out that while it did provide some value for money, it also proposed several concessions, especially the sharing of the hotel room tax, which could lead to significant competitive disadvantages for others in the local hotel and tourism market.

Before going further, it is important to note that however bad a deal we and others may believe the original agreement was, it and the two subsequent amendments to the agreement were legally binding and committed the UDP government of the day and all future governments to its terms.

Madam Speaker, I want the country to understand that this was the starting point when this Government took office.

Be that as it may, we campaigned on re-negotiating certain aspects of the agreement and we also advised Dart of this in meetings with them prior to the elections. In particular we were unhappy with the 50 per cent hotel tax concession aspect of the agreement. The PWC value for money report indicated that we were right to be concerned.

We understood then and indeed still do understand the value and importance to the Cayman Islands of the development done by Dart. However, we could not allow the 50 per cent tourism tax and various other aspects of the agreement to remain because of the harm to government revenues and distortions it created in the market.

We explained this to Dart Realty and invited them to sit down with us to negotiate a third amendment. They were agreeable because they, like us, appreciated that the relationship between Dart and Government had to be mutually beneficial and congenial. Ours is a relationship for the long term and compromise was important as it is in all relationships. The broad goals we were determined to achieve with a third amendment were to:

- Remove the 50 per cent hotel tax sharing concession;
- For Dart to provide alternative access through Dart property in the event of the closure of the Esterley Tibbetts Highway for any emergency;
- Maintain the future public rights of way access to the sea along developed Dart properties. This also left control of such public rights of way with the CPA rather than allowing Cabinet to make these changes.

The following were also considered desirable to encourage Dart to complete its development sooner rather than later:

- Allow Dart Realty to do its development over a shorter time frame than the original 30 years;
- Allow Dart to construct different types of development beyond hotels and tourism related businesses.

In 2014 Government contracted with PwC to provide consulting services during the negotiation period. Negotiations were carried out with the benefit of their advice and guidance and technocrats in government managed the process.

The National Roads Authority Board of Directors was kept apprised during the negotiation period and provided its feedback to the process - and it has reviewed and accepted the final amendment. Indeed, the board was a signatory to this third amendment.

The improvements that comprise this third amendment are in the main aspects the following:

1. The removal of the sharing of Hotel Room Tax concession is one of the major achievements of the third amendment.
2. Broadens the development mechanism to include residential and commercial developments. The original agreement focused predominantly on hotel and tourism development; however, broadening the mechanism had several advantages:
 - a. Incentivize and focus development for the first 10 years;
 - b. Potentially utilize the concessions more effectively and efficiently;
 - c. Of note: the divestiture of the freehold of the Dragon Bay lands for potential residential development was seen as part-and-parcel of this objective, as this property, which was formerly known as Safehaven, had over the past 25 years proven unattractive to residential developers and purchasers because it was leasehold.
 - d. Redefined the Net Present Value Abatement to include the value of the Hotel Tourism tax for the Kimpton. This is part of the revised arrangement to have Dart Realty agree to remove the hotel concession tax from the agreement.

I must note, Madam Speaker, that the sale of the freehold interest in the Dragon Bay lands will be done in accordance with the Governor (Vesting of Lands) Law (2005 Revision). This is the law that governs the sale of Crown property.

The law calls for three valuations to be done on the property including two independent evaluations and one by Lands and Survey. These came in between US\$12.448 million dollars at the low end and US\$16.686 million dollars on the high end. Negotiations were carried out on the sale by senior ministry and department staff and the final agreed price was US\$14.574 million dollars. In determining the sale price a number of factors were taken into consideration

Dart already owned the leasehold on the property parallel to a 99 year lease, which still had about 75 years to run. There were no other parties that would have been able to develop the property unless Dart wanted to sell. Further, it needs to be appreciated that few buyers were attracted to the already developed condominiums or to build houses on the lands for at least the last 25 years because the property was leasehold. Why should they buy leasehold when a stone's throw away there are many options that are freehold?

At the end of the day the value of any property is what a willing buyer and a willing seller agree.

So the sale of the Dragon Bay lands will be carried out according to law and a price was obtained that was within the expectations of the various evaluations.

In exchange for the freehold interest in these lands Government will receive US\$14.574 million dollars, and as Dart develops and sells the property, Government will receive millions of dollars in stamp duty and development fees and jobs will be created for our people during the development phase.

So the sale of the Dragon Bay lands is a win-win for Dart and Cayman and Cayman will continue to receive benefits for decades to come.

I would add that as we negotiated the sale, we ensured that the rights of all stakeholders were considered, including those who now own leasehold rights to condominiums on the property, as well as access to waterways passing through the property. Sorting through these types of issues is another reason the third amendment took all this time to complete.

Continuing with the main improvements to the agreement:

3. The third amendment commits Dart to US\$400 million dollars of development (excluding the Kimpton and infrastructure costs) over 10 years versus the original agreement that spread the development over 30 years. This change recognised the preference by Government to have Dart start and complete development projects sooner rather than later. This also recognised that it was difficult to predict or truly commit to the magnitude of development over several decades as called for in the original agreement.
4. It should be noted that the current works on the Kimpton and infrastructure will on completion be worth at least an additional US\$400 million dollars. Thus, all combined over the 10 years, Dart will have spent around US\$800 million dollars.
5. It was thought that the original agreement was too wide reaching with regard to waivers and allowed Dart to receive concessions on new infrastructure works or development. Therefore this third amendment does not allow for much of the infrastructure costs being undertaken by Dart Realty to be included in the US\$400 million dollars. Of

particular importance, the realignment and upgrading of the Esterley Tibbetts Highway from a new roundabout just south of Camana Bay (ACR1) to the Century 21 Roundabout is not included in the US\$400 million dollar investment package.

6. In fact, these road works are being undertaken and paid for at significant costs by Dart Realty after being approved by and through the National Roads Authority. They will benefit Dart properties but will also benefit the Cayman Islands as it will allow for the creation of an additional two lanes in either direction. This is work the Government would not have been able to afford and that Dart is doing out of its own pocket. It is also work they have in fact already commenced on their own land.
7. These roads built by Dart will be gazetted as a public road. This gives the added assurance that:
 - a. This portion of the road, which is paid for privately by Dart Realty will become a public road, or Crown Property; and
 - b. Costs associated with the expansion can receive a waiver under the existing agreement, which again assists in utilizing the concession quicker. Dart has agreed to waive rights to compensation under the Roads Law in respect of its land required for the new corridor.
8. Government has agreed to sell Dart the remaining property known as part of 'the Soto Land', comprising approximately 4.2 acres of undeveloped Crown land located east of the car park at Seven Mile Public Beach. Dart holds the remaining term of a 99 year lease of most of this land from the Crown, Dart having acquired the lease from the Sotos. The sale will be carried out in accordance with the Governor (Vesting of Lands) Law and will be sold for a price still to be negotiated, but based on market value, in the same fashion as the Dragon Bay lands. Dart will also surrender the remainder portion of this lease of the Soto lands, being the area on which is located the children's play area, public beach car park, beach football pitch and beach volleyball courts, collectively known now as the Public Beach Park.
9. Dart agreed to remove the provision in the second amendment that allowed them to relocate future public rights of access to the sea into a new public beach. This means that whilst there may be no new public beach, the public will maintain future rights of access to the sea through Dart beach front lands that are developed in the future, and importantly, the CPA will maintain control over such public rights of way, and not Cabinet.
10. Madam Speaker, for the benefit of the House and the listening public, let me try to explain briefly the purpose of the Net Present Value and the change introduced by the third amendment. The original NRA Agreement sought to recognize that Dart would be making significant investment in the Islands with the building of the Esterley Tibbetts Highway extension, as well the monies extended to the UDP Government to be used for community

purposes – such as the Save the Mortgage scheme. In other words, it recognized the value of money spent now versus what is spent later by way of a discount rate - in this case 10 per cent, compounded annually. It is regrettable that the original agreement had such a high discount rate. But that is the rate we were bound by.

11. Madam Speaker, we recognized from the outset as did PwC, that Dart Realty would be looking to replace any value lost when giving up a concession in this third amendment. This included the hotel room tax rebate for the Kimpton Hotel, which had an estimated value of US\$13.1 million dollars. It should be noted that Government sought hard to reduce the discount rate of 10 per cent agreed by the previous Government in the original agreement, but was not successful in doing so. Therefore, we sought to widen and encourage Dart to greater development so as to utilize this abatement as quickly and effectively as possible. And Madam Speaker, this inclusion of US\$13.1 million dollars to the NPV cap, in place of the hotel tax rebate, is certainly more preferable than leaving the status quo as this would have cost Government much more over the long term. PwC in its original value for money review noted that the hotel tax rebate could potentially provide Dart Realty with a tax rebate until 2052 under the terms of the second amendment agreement. It also estimated that a total rebate given to Dart on their developments proposed at the time could amount to as much as US\$62.3 million. Compared to this amount, the US\$13.1 million included for the Kimpton alone under the third amendment is a huge win.
12. Government has the option to accept three acres of lands to build a new Sunrise Adult Training Centre or accept US\$1.35 million dollars as a cash payment. In addition Government also has the option to accept 20 acres of land for education and community purposes in West Bay or receive US\$1.85 million dollars as a cash payment. Government has up to six months following the signing this agreement on the 30th of May to decide on an option.
13. Dart Realty will construct the expansion of the Esterley Tibbetts Highway between ACR1 and the Butterfield Roundabout at a cost to the Government that has been negotiated by the National Roads Authority and which has been deemed to be commercially competitive.
14. Government will enact new legislation that covers volumetric parcels as well as the concept of positive covenants. The work on this is ongoing and when complete will benefit Dart as well as all developers, facilitate new types of land development above public roads and make the development of land more efficient.
15. The Government has also been cognizant of the procedures for negotiation and Ministry staff and relevant Government technocrats have endeavoured to participate fully in the process. All meetings were held at the Government Administration Building with senior Ministry staff present.

16. The Ministry of Planning is liaising with the Planning Department and the Financial Secretary's Office to track development spend and concession waivers by and for Dart to inform Cabinet of Dart's spend within the \$400 million dollars 10 years commitment.

Prior to signing this third amendment, the Ministry requested that PWC review the third amendment and compare it to the earlier amendments that were the focus of their value for money review. They were asked to give an assessment as to whether this third amendment provided improvements over the earlier versions. They concluded in the following terms follows:

"In general, the provisions of the draft third amendment reflect the goals of CIG and perhaps most importantly the removal of the hotel tax rebate."

The letter went on to recognise that even with the third amendment the deal remains imperfect but it recognised the benefits brought in by the third amendment coupled with the substantial investment undertaken by Dart, which was not included in the original value for money review.

PWC noted that "In light of the above, CIG can have some confidence that the objectives of supporting economic growth through encouraging significant private sector investment will be achieved through this draft third amendment".

It concluded "We believe that it would be to CIG's advantage to conclude negotiations of the NRA Agreement and not seek further changes than those foreseen by the draft third amendment. Future development agreements or other transactions with Dart Realty should be negotiated on their own merits and without reference to the NRA Agreement, as amended"

That is sound advice indeed.

The third agreement was signed on the 30th May, 2016. Government will now move forward and request that Cabinet consider the closure of the remainder of part of the West Bay Road so as to complete our obligation in that regard.

We also wish to recognise the ongoing commitment to the Cayman Islands shown by Dart and I extend our appreciation to Dart for working with this Government and for having the confidence to start the agreed works even though we have only now been able to complete the signing.

I thank this Honourable House.

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