



GOVERNMENT OF BERMUDA

The Ministry of Finance

Ministry of Finance Headquarters

**Ministerial Statement
To the House of Assembly
By
The Hon. Curtis L. Dickinson, JP, MP
Minister of Finance**

Caroline Bay – The Way Forward

24 July, 2020

Mr. Speaker, I rise this morning to provide this Honorable House with an update on the Caroline Bay Development and to provide the House with an interim report describing how we see the development progressing. In doing so I will provide greater context into how we have viewed the project from the time we were made aware it was in financial distress, steps that are being taken currently, and the way forward on the project.

Mr. Speaker there are some aspects of the Bermuda Government's plans that, on the advice of our lawyers, will not be discussed at this time. Honourable Members of this House will be aware that where matters are *sub judice*, meaning they are in the hands of the Courts, it would be inappropriate to comment prematurely. Where it is possible for me to share greater detail

with this Honourable House and the People of Bermuda now, I am happy to do so.

The History

Mr. Speaker, the sad history of the project is well known and I have written in detail previously about how beginning in June 2019, both the Tranche B and C lenders formally notified the Developers and the Government of their demands to be repaid immediately due to events of default having occurred. Consequently, and contrary to comments made by the Developers in the media, the Government legally had to meet its obligations under the loan and guarantee agreements. Specifically, the demand under the Tranche B agreements was received on 19 August 2019 and required payment within 45 days, by 3 October 2019.

Mr. Speaker, the Government acted quickly to first secure sufficient liquidity to meet its immediate obligations and provide contingency while it examined any other exposures. On 17 September 2019 we closed on a \$200 million credit facility with local financial institutions.

Following that, we exercised our option as Guarantor under the Tranche B loan agreements to purchase rather than pay off the loan. This preserved all the rights that the debt holders had for the Government to use in due course. The purchase price on exercise of this option was clearly defined in the loan agreement. This included the \$85 million principal, accrued and unpaid interest, and legal expenses of the Tranche B lender for the

transaction. Additionally, it required a 4% prepayment premium of \$3.4 million – again contrary to a statement made that the Government unnecessarily paid a \$10 million prepayment penalty – resulting in a total purchase price of \$88,472,958.32. The transaction closed on 19 September 2019.

Mr. Speaker, having satisfied the Tranche B obligations, we then negotiated purchasing the Tranche C loans from Arch and AXIS. The purchase price was limited to \$75 million principal plus \$5 million of guaranteed interest. Thus, total consideration was \$80 million and the transaction closed on 7 October 2019. At the time, the total owing on the loan considering default interest rates and payments of principal-in-kind was over \$99 million, and today is almost \$109 million. This action avoided wasteful potential litigation with two of our most important international businesses and partners.

Mr. Speaker, the Bermuda Government did more than just this however. We also committed to purchase the claims of the contractors and subcontractors who had been left unpaid by the Developers. We worked with the main contractor, dck Bermuda, to understand the extent that they and so many Bermudian subcontractors had been left unpaid by the Developers. We did not have a legal obligation to do so. It was of national economic importance for them to be paid immediately while we took the necessary time to evaluate a way forward, and a way to get the money back for the people of Bermuda. On 20 December 2019, we purchased dck's claims for a total price of \$11,051,437.29 and immediately began paying subcontractors.

Mr. Speaker, these were business people who had placed their faith in the Developers much like the former Government had done, and had been left financially holding the proverbial bag. We used the new borrowing to purchase their claims and added them to the amounts paid on the loans outstanding, and the interest on those loans to arrive at what the Bermuda Government is owed on the Caroline Bay project.

Steps We Have Taken

Mr. Speaker, I set out in precis the steps the Bermuda Government has taken to date:

- We raised \$200m in Bank Debt at 4.25%
- We acquired the defaulted loans from the Tranche B and Tranche C Lenders
- We acquired claims from contractors and subcontractors, thereby providing them with the funding that had been outstanding for over a year.
- We bought the Tranche B and C Loans to satisfy our legal obligations and to provide us with the full suite of legal remedies available to the previous debt holders.
- We applied to the Supreme Court of Bermuda and were successful in appointing Joint Provisional Liquidators from leading accounting and audit firm EY over operating company Georges Bay Limited (GBL).

Mr. Speaker, the Bermuda Government now has 98.8% of the claims outstanding against Georges Bay Limited. To date the Developers have not paid anything on the claims outstanding. Surprisingly, they commenced a public relations campaign to encourage the Bermuda Government to provide them with a second chance on the deal. We have made detailed comments in the press as to why we will not engage in a second transaction with them so there is little benefit to repeating those statements here, except to reiterate that the recent revelation that Starwood Capital had not agreed to provide financing on this deal came as a surprise to the Bermuda Government as well, this having been alleged on numerous occasions since December 2019 by the Developers.

Joint Provisional Liquidators

Mr. Speaker, Joint Provisional Liquidators (JPL) are independent and are under the sanction of the Bermuda Courts. By law they are entitled to have access to all the books and records of an insolvent company so as to examine what rights the company may have against parties involved for the benefit of creditors. That investigation began on their appointment and to date they have conducted initial interviews with each of the Directors and have been provided with access to the records of the law firm representing GBL, and the auditors for the company. Access to the files of GBL and the books and records held by their Directors continue to be provided to the JPL's as well.

The JPL's are undertaking several actions on the behalf of the company in the best interests of the creditors as a whole. Firstly, they are assessing the affairs of the company and are reviewing the statements, bank records, emails and corporate documents to determine what steps were taken inside the company and where funds have been spent. Once they have completed this exercise they will be in a position to determine if any party associated with the insolvent company bears any liability and/or responsibility for the massive losses visited on the People of Bermuda.

Secondly, Mr. Speaker, they are engaged in a construction review process to determine what the status of the various buildings are and what works need to be conducted in the very near term to maintain the best value in the company's assets. The review includes an assessment of what it would cost to complete the project as currently designed, and what in the current market its best use might be.

Finally Mr. Speaker, they will engage in a process to sell the company's assets, so as to raise funds to satisfy creditors' claims. This part of the process is at an early stage and will be determined over the next few months while the above steps are underway. As the largest creditor and the only secured creditor in the process, the Bermuda Government is well placed to be paid the proceeds of any sale or to receive the assets as partial payment of funds owed.

Mr. Speaker, I am certain that Honourable Members will be united in supporting the efforts of the JPL's to bring clarity to this project and holding accountable all who are deemed responsible for the losses the People of Bermuda have suffered.

Current Activity

The Government of Bermuda and the JPL's respectively, have each commenced further winding up proceedings against two companies: Commodore Limited, owned by Caroline Bay Limited and Caroline Bay Marina Limited owned by Georges Bay Limited. Both companies failed to pay creditors' outstanding debts when they became due and are part of the wider Caroline Bay group. A complex series of legal proceedings have been commenced by the JPL's seeking to determine why the Caroline Bay project collapsed and who was responsible for the project failing.

The Way Forward

Mr. Speaker, while much of the activity at present is in the hands of the JPL's the Bermuda Government is concurrently preparing to assume responsibility for the assets should they be used in partial satisfaction of the outstanding claims owed to the people of Bermuda. Our advisors will have access to the reports on best use and cost to complete, and on the basis of a detailed analysis we will be able to determine the best way to get value out of the project.

Mr. Speaker, Honourable Members should be aware that we are also open to working with qualified professional developers in finding a way forward that mutually benefits the People of Bermuda. We are intentionally setting a high bar however for any potential partnership. Partners will have to demonstrate a history of successful work on projects of the size and scope represented by Caroline Bay, and will have to have capital they can commit to the project in the form of actual cash equity alongside the Bermuda

Government. We will also insist that they have the highest integrity; all of which must be the case before they can even be considered.

Mr. Speaker, as I have said previously, the land at Caroline Bay continues to represent an important opportunity for Bermuda. The economics of the development must be recast and devised with a realistic view of the world economy. This opportunity is too important to squander.

Thank you, Mr. Speaker.