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**Remarks by THE LEADER OF GOVERNMENT BUSINESS
THE HONOURABLE D. KURT TIBBETTS, JP., MLA
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CONSTITUTIONAL MODERNISATION - THE WAY FORWARD

Since the publication of the Government's Revised Proposals for Constitutional Modernisation on 22nd May this year we have carefully monitored feedback from the general public and we have also paid attention to the objections raised by the Opposition to the referendum being held next month. The issues and objections raised can be summarized as follows:

- a. More time is needed to consider the matter of constitutional modernisation;
- b. There remain concerns about the impact of a bill of rights on Cayman's culture and way of life;
- c. People wish to approve the final constitutional document and in particular, the Bill of Rights chapter and therefore the referendum

should be held on the draft constitution and not on the Revised Proposals;

- d. July is a bad time for a poll to be held because many people will be away on vacation;
- e. There are concerns about a low turn-out for a referendum held now; and it might then be said that the result of the referendum would not be representative of the will of the people of the country;
- f. The referendum should be made to coincide with the general elections in May of next year.

Constitutional modernisation is a matter of the greatest national importance. It is critical to the future of this country. It is not about what the government wants or what the opposition desires. It is about what Caymanians want and believe to be in their best interests. This Government has always proceeded on this basis and we continue to adhere to the view that there must be general support by the electorate for constitutional change. And the electorate should not be pushed into a decision before it is ready to vote. Therefore, after careful consideration of the various issues and objections I have just outlined and discussions with His Excellency the Governor, we are today announcing a change in the constitutional modernisation process.

We have decided to defer the holding of the referendum until the conclusion of constitutional discussions with the United Kingdom Government and the production of a draft constitution. We have asked the Foreign and Commonwealth Office, the arm of the UK Government which has

responsibility for the Overseas Territories, to commence those discussions as soon as possible. They have indicated that they are willing to begin those discussions in September of this year. The objective is to have a draft constitution available for public discussion by the end of the year or early January next year, with a view to a referendum being held on that draft constitution to coincide with the general elections on May 20th next year.

We expect that more than one round of discussions will be necessary on a matter of such complexity and importance. I am happy to say that the FCO has agreed that at least the first round of talks will take place in Cayman.

The Cayman delegation will be made up of members of the Government and the Opposition, and we will be proposing a number of representatives from NGOs such as the Chamber of Commerce and the Cayman Ministers' Association as well, to ensure balance and full transparency of the process.

I have today written to the Leader of the Opposition advising him of the foregoing. Despite the failure of the Opposition thus far to participate constructively in the constitutional modernisation process, we are hopeful that they will now properly engage in the process and carry out their duty as members of the Opposition. In particular, we hope that the Opposition will at last make clear what changes they would like to see in the constitution. We can then deal with our differences in a sensible and open way.

It is now almost six months since the Government first published its proposals for constitutional modernisation but to date the country is still waiting for the Opposition to state their position on what a new constitution

should contain. All that the country has seen from the Opposition is a document which raises questions but provides little insight into their position on the important constitutional issues.

The Opposition are now saying that they want to carry out their own public consultation process, at the country's expense, before expressing their views on what the constitution should contain. This is simply a delaying tactic. We know that the Opposition have their own views on what the constitution should contain; and they had no hesitation in telling the country about them in 2004. They have had since January of this year to discuss with the public what they now have in mind. They have attended meetings convened by the Secretariat, and they have called meetings of their own. At these meetings they could and should have put forward whatever they have in mind. I hope that they will now do so, without further delay or prevarication.

We also hope that the Opposition will be prepared to meet with the Government and NGO representatives in advance of the September discussions with the FCO so that we may understand their position on the issues and hopefully narrow the differences between us before we go to the table. The public will be kept apprised of developments in this regard.

Having stated the way forward I need to remind you about what has really been going on.

In our 2005 Manifesto we said that any significant constitutional change should require the people's approval at a referendum. We were disagreeing

strongly and fundamentally with the UDP Government which had been doing its best to have the constitution changed without a referendum.

The UDP Government's behaviour reflected its view of government. The UDP thinks that democracy ends when voters mark their ballots at a General Election. They think that after the election the Government is free to do whatever it wants, to use its powers to advance its own political ends, to intimidate its opponents, and to ignore the wishes of the people.

That was a fundamental difference between us at the last election. And it still is. We stand for real democracy. The Government should serve the people. We advocate a constitution that will ensure that in future the elected representatives of the people will not be able to take the same crude and cynical approach as the UDP. We want no elected dictators here.

As we said in our 2005 Manifesto, we need more checks and balances on the powers of the Government. We need Freedom of Information and a constitutional guarantee that it will not be taken away from us. The people should have a constitutional right to demand a referendum on any issue. And the constitution should itself say that any significant further change to the constitution would require the people's approval at a referendum.

Voters at the 2005 General Election rejected the UDP approach to government and expressed their desire for real democracy. So the new Government set about the process of obtaining a constitution that would secure true democracy. And I suppose it should be no surprise that the UDP, or its remnants, have looked for ways to undermine that process.

It was obvious from the outset that this was not going to be simple or easy. The constitution is complicated. Not many people have enough experience of the constitution and of government to form unaided their own opinion on what exactly the new constitution should say. People naturally look to their political leaders for explanation and guidance. Furthermore, though everyone knows that the constitution is important, not everyone has the time and inclination to get fully involved in its details. Referendums are not easy either.

A basic question which we and our advisers considered at the planning stage was whether we should go to the people at the beginning or the end of the process. We decided that we ought to do so at the beginning. In other words we should have public consultation and a referendum before drawing up the final proposals and giving them to London. The alternative was to draw up proposals along the general lines indicated in our Manifesto, invite London to prepare a draft on that basis, and then at the end of the process have public consultation and a referendum to approve London's draft.

We felt that Caymanians should have the opportunity to make their comments and suggestions at the beginning of the process, so that they could influence the proposals given to London. Under the alternative approach Caymanians would only have a voice at the end of the process and would then be under some pressure to approve London's draft even if it contained features that they did not like – knowing that if the draft were rejected, we would be back at square one.

Another reason for our decision was that it would put pressure on London to agree to our proposals if they were seen to be the result of a process of public consultation and were endorsed by a strong vote in a referendum. And there was good reason to think that we could develop in the consultation process a set of proposals that the whole country would feel comfortable with and want to endorse.

The possibility of a second referendum, to approve London's draft, was not ruled out but we indicated that it would only be needed if the draft was inconsistent with the proposals approved by voters at the first referendum.

The public consultation process has achieved most of its goals. It kicked off in January when we put on the table for discussion a set of outline proposals and explanatory notes. Since then there has been an unprecedented programme of meetings, broadcasts, and discussions arranged by the Secretariat, and a number of constructive meetings and events organized by others.

All Caymanians have been given the opportunity to hear the proposals explained and discussed, and to express their views and concerns. Many individuals and bodies have done so. The proposals have been revised accordingly – especially as regards the proposed Bill of Rights. The Revised Proposals also take into account the few specific proposals that the Opposition have made. In these respects the consultation process has been successful and valuable.

But the Opposition has been carrying out a hypocritical campaign of disinformation, scare-mongering and confusion, and I am sorry to say that they have to some extent been successful in their goal of unsettling public confidence. I am sure that most Caymanians see the Opposition's campaign for what it is. You only have to compare what the Opposition are saying now with what they said and did when they were the Government. You only have to think about their slogan "if you don't know, vote no". It is clear enough what they are trying to do. But it is nonetheless disquieting and confusing for voters. People are not entirely sure that they can disregard the scary things the Opposition and their friends have been saying.

I am not criticizing the Opposition for disagreeing with the proposals we put on the table. On the contrary, we wanted them to do so, and we knew that there were some points of difference. We wanted the public to see what its political leaders agreed on, and what they disagreed on. Public discussion could then focus on the points of disagreement, and we could try to resolve them in a sensible way. Failing compromise, we intended to put the contentious points to the referendum.

But it has turned out that the Opposition are more interested in political warfare and undermining the process than in getting the best constitution for the country. So they have ducked and weaved to avoid saying what they think the constitution should say. Confronted by the record of their own proposals made to the LA in 2004, they claimed to have had second thoughts. But we are all still waiting to hear what they might be.

Voters are now in the difficult position of needing to make an important decision on complicated constitutional proposals without having any real understanding of what the objectors are objecting to or why, and without knowing what the objectors propose. The indications are that under these circumstances voter turn-out at the referendum is likely to be low, especially as many voters are currently and understandably more concerned with immediate questions about the cost of living.

If we went ahead now with the referendum and there was a low turn-out, the referendum result would make little or no impression in London. And it would not deter the Opposition representatives at the discussions in London from pressing for something different. There would be a strong probability that we would need to hold a second referendum to make the final decisions. In other words, a referendum at this stage would be a waste of time and money if we did not get a good turn-out. Voters cannot be compelled to vote before they are ready to do so.

This is why we have asked London to commence the constitutional discussions as soon as possible. We will put forward the Revised Proposals and emphasise that they were arrived at after extensive public consultation. The Opposition representatives at the discussions will, we hope, feel constrained at last to voice and explain their objections. This should enable the process to move forward in a sensible way. When London has drafted the new constitution there will need to be a further period of public consultation leading to the referendum.

I am not happy that this change of plan has become necessary, but I am sure it is now the best way forward.

As in all things, Government needs to be firm in its objectives but flexible in its methods. The objective is to get the constitution that the country wants. There is no change on that, and we are determined to get it done.

I have no doubt that we were right to start with the public consultation. This has been very worthwhile, and the expense fully justified – though obviously it would have been even better if the Opposition had participated in a responsible way and had not conducted its campaign of scare-mongering and confusion.

A referendum now, before we talk to London, would be best for the country if the country was ready to vote. But, thanks in large part to the Opposition, it seems the country may not yet be ready. And a referendum with a low turn-out would be a waste of time and money. So we need to change the order of events and get started on the talks with London.

This will tell the country what London thinks about the Revised Proposals, and it will give the Opposition their final opportunity to explain what they think the constitution should say. We will keep the country informed. When the talks finish and London produces the draft constitution that it is willing to give us, the draft will be published and there will be a final period for public discussion before voters are asked to make their decision at a referendum.