

**NCC statement on proposed NCA amendments and recent JR
June 19, 2024**

Good afternoon. Given the recent press coverage on matters relating to the work and functioning of the National Conservation Council I wish to make a brief statement before we begin our meeting.

Although the National Conservation Council has not yet been formally or officially consulted on any possible changes to the National Conservation Act, Council wishes to express its grave concerns after the publication of the Cayman News Service article last week which reported details of the alleged amendments. The Council is particularly concerned about some of the possible proposed amendments and what appears to be a misinformation campaign designed to discredit the National Conservation Act and the work of both the National Conservation Council and Department of Environment.

The passage of the NCA in 2013, has enabled the Cayman Islands Government to fulfil its duty under Section 18 of the Bill of Rights in the Cayman Islands Constitution Order which states:

(1) 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 government should adopt reasonable legislative and other measures to protect the heritage and wildlife and the land and sea biodiversity of the Cayman Islands that— (a) limit pollution and ecological degradation; (b) promote conservation and biodiversity; and (c) secure ecologically sustainable development and use of natural resources.

The NCA also enables the Cayman Islands Government to meet its commitments under several international multilateral environmental agreements, including, but not limited to, the Convention on Biological Diversity and the Ramsar Convention on Wetlands. Additionally, the NCA enables the Cayman Islands Government to fulfil its responsibilities under the Cayman Islands Environment Charter which was signed by the UK Minister for the Overseas Territories and by the Honourable McKeever Bush, OBE, JP, MP on 26 September 2001. The Environment Charter includes guiding principles and a set of mutual commitments by the UK Government and the Government of the Cayman Islands in respect of integrating environmental conservation into all sectors of policy planning and implementation. Precedent from the Bermuda Courts clarifies that the Environment Charter is in fact a legally binding agreement

In 2012, prior to the passage of the NCA, the UK government commissioned an **assessment of environmental protection frameworks in the UK Overseas Territories**. The assessment focussed on species, sites, development control and people and a report was produced by The Foundation for International Environmental Law and Development (FIELD) and The Royal Society for the Protection of Birds (RSPB) in February 2013. The results revealed that, along with Pitcairn Islands, the Cayman Islands was the only one of the 16 UKOTs to have been assessed as “**WEAK**” across all areas. In relation to “development control” the report noted: *“Integration of environmental concerns into planning procedures is weak and there are no formal EIA requirements. The draft National Conservation Bill would introduce a formal process for triggering, scoping and conducting EIAs. The development plan for Grand Cayman is from 1997, despite the law requiring review every five years. Other development plans are absent”*. In relation to the area of “people” the report stated that *“Political accountability for decision-making is limited as is the extent of transparency and consultation.”* The report also confirmed that *“Enactment of the draft National Conservation Bill was seen as necessary for strengthening environmental governance in all areas other than development control, which required Updating of the Development Plan for Grand Cayman and the creation of Development Plans for Cayman Brac and Little Cayman”*.

The various provisions of the NCA are therefore necessary to support and provide for a robust environmental governance framework for the ultimate benefit of the people of the country. All of the provisions of the NCA embody best international practice such as the Act’s use of the **precautionary principal** which acknowledges the likely significant risk of adverse effects – or the potential for irreversible damage – as reasons to fully consider the environmental implications of all our decisions and plans and to err on the side of caution when all the relevant information is not immediately available.

This is why it is imperative that the competencies and expertise of the Department of Environment continue to be available to assist Council with the proper and efficient discharge of its functions and duties, and that the requirement for the majority of Council members to possess relevant technical or scientific expertise remains a part of the Act. With the passage of the recent rainy weather and the resulting flooding of roads and residential areas, the benefits of making evidence-based decisions to protect human life, property, the economy and the natural environment are hopefully obvious to all.

Hopefully it should also be obvious to everyone living in the country, that despite the dire predictions of its detractors, the various provisions of the NCA have not in fact impeded economic growth and development since its passage in 2013. The official government statistics certainly bear this out.

The NCC strongly believes that the NCA is extremely important in our collective efforts to preserve our Caymanian identity and our quality of life. There is a growing body of evidence which shows that a healthy environment which is underpinned by strong legislative protections is a prerequisite for healthy people as well as a healthy economy. The NCC is therefore resolute in its belief that the various provisions of the NCA are absolutely essential for the sustainability and viability of our country now and in the future. Any amendments to the Act which dilute the Council's ability to act efficiently or that result in poorer conservation outcomes and a sub-standard environmental governance framework for the people and natural environment of the Cayman Islands are ill advised and are therefore strongly discouraged.

Council is also aware that there has been significant public interest in a second judicial review of a recent CPA decision to approve an after-the-fact application for the construction of a road in an environmentally sensitive area in the eastern interior of Grand Cayman. The CPA decision violates the consultation provisions of the NCA, similar to the unlawful decision on the Boggy Sand road proposal which resulted in the Grand Court and Court of Appeal finding in favour of the NCC. Based on legal advice, the NCC filed the Judicial Review as it appears to be the only legal way to have the unlawful CPA decision quashed and reverted to them for proper consultation under the NCA and in accordance with the recent Court of Appeal judgment. As one of the parties to the Judicial Review there is nothing which can be said that is not already a matter of the public record, other than it remains our hope that a negotiated rather than litigated resolution can be achieved between the parties.

Thank you for time and attention.

Stuart Mailer
Chair, National Conservation Council
Cayman Islands