



Proposed amendments to the Cayman Islands National Conservation Act

- Comparison to good environmental governance standards in developed nations

Summary

If passed in its current form, the amendment Bill would cause significant weakening of an already limited development control framework, leaving the Cayman Islands with a sub-standard system below basic levels of good environmental governance expected in developed nations. The loss of adequate input of scientific information would undermine transparency in the development process. The ability of decision-makers to be able to receive well-informed analysis would be eroded, increasing the risk of poor decisions for the future of the islands. In its current form, the Act needs strengthening in 4 key areas to allow modern publicly transparent procedures with adequate democratic checks and balances and due process. This is discussed in more detail at the end of this analysis.

The act is already weak in places and has not been historically enforced, the following amendments will create an even weaker act which will be damaging to the environment and due process.

Potential Changes	Current Act State	Proposed New State	Standard Practice	Comment
Composition of the National Conservation Council (SCHEDULE 2 Section 3)			The composition of a national conservation council can vary depending on the country and specific	

Voting Members	(a) Director or nominee from the Department of the Environment	(i) Director or nominee from the Department of the Environment (no vote)	legislation, but typically, the board includes a mix of government officials, experts, and representatives from various sectors.	<p>In the UK, the planning process includes several measures to protect the environment. Since the implementation of the Habitats Directive in 1994, it has been standard practice to consult environmental experts during the planning process. The CPA in Cayman does not hold this expertise. The above regs transposed into UK law through the Conservation (Natural Habitats, &c.) Regulations 1994, requires that any plan or project likely to have a significant effect on a protected site must undergo an appropriate assessment. This assessment makes sure that the potential impacts on habitats and species are thoroughly evaluated and mitigated. Developers may need to secure mitigation for environmental harm before being granted planning permission.</p> <p>The benefit of the UK's Imperative Reasons of Overriding Public Interest (IROPI) framework is that it clearly distinguishes between public and private interests. This distinction is relevant to the current situation in the Cayman Islands, where proposed amendments to the National Conservation Act (NCA) risk prioritising private interests over public ones. Specifically, these amendments could allow the government to bypass environmental impact assessments for certain projects, potentially favouring private development at the expense of public environmental protection.</p>
	(b) Deputy Director of Research in the Department of the Environment	(ii) Deputy Director of Research in the Department of the Environment (no vote)		
	(c) Director of the Department of Agriculture or nominee	(iii) Chief Officer of the Ministry responsible for agriculture or nominee (no vote)		
	(d) Director of Planning or nominee	(iv) Chief Officer of the Ministry responsible for planning or nominee (no vote)	<p>The Chief Officer in the Ministry, typically a technocrat or administrator who is not required to have scientific or technical expertise, contrasts with the Director of Departments, who usually possesses relevant scientific or technical knowledge. This shift represents the insertion of political control over scientific evidenced-based processes, effectively diluting the impact of having an environmental expert. The roles are becoming interchangeable, undermining the importance of specialised environmental or scientific knowledge.</p>	
	(e) Person nominated by the National Trust and appointed by the Cabinet	(v) Chairperson appointed by the Cabinet		
	(f) 8 persons appointed by the Cabinet, at least 4 with relevant scientific or technical expertise	(vi) Person nominated by the National Trust		
		(vii) 1 person from each district (West Bay, George Town, Cayman Brac and Little Cayman, Bodden Town, North Side, East End)		
Co-opting Additional Members (PART 2-ADMINISTRATION Section)	Council can co-opt additional members	Council cannot co-opt additional members	The ability of a national conservation council to co-opt additional members can	

3)			<p>vary depending on the specific legislation and regulations governing the council in each country. In some cases, councils are granted the flexibility to co-opt additional members to bring in specific expertise or to address particular issues. This can help ensure that the council has the necessary scientific knowledge and skills to make informed and transparent decisions.</p>	
Management of Environmental Protection Fund (PART 7 – Section 47)	Council manages and makes recommendations	Cabinet manages the fund	<p>The management of an Environmental Protection Fund can vary. In some cases, the National Conservation Council or a similar body may have the authority to manage and make recommendations on the use of the fund. In other instances, the Cabinet or a government ministry may be responsible for managing the fund. New Zealand manages its environmental tax from tourists through the International Visitor Conservation and Tourism Levy (IVL) the Ministry of Business, Innovation, and Employment (MBIE) and the Department of Conservation co-manage the IVL, ensuring transparency and public accountability in how the</p>	<p>In order to reinforce public trust we believe the fund should be depoliticized and managed by an independent body. In order to ensure transparency it is important to clearly define the fund's purpose. Section 46 (1) of the NCA states that the fund is to be used "for the acquisition and management of protected areas and for measures to protect and conserve protected species and their critical habitat. In addition to a focus on the management of the fund alone, stronger guidelines on its intended use are necessary.</p>

			funds are used. This transparency and due process is enacted in legislation in the Immigration (International Visitor Conservation and Tourism Levy) Amendment Act 2019.	
Delegation of Functions (PART 2- ADMINISTRATION Section 3 (13))	Council can delegate functions to the Director of the Department of the Environment	Council cannot delegate functions without Cabinet approval		<p>Allowing delegation without Cabinet approval can streamline decision-making and operational processes, allowing the council to respond more quickly to environmental issues. Expertise: The Director of the Department of the Environment typically has the necessary expertise and knowledge to handle delegated functions effectively. Autonomy: It can empower the council to operate more independently, fostering a sense of ownership and responsibility.</p> <p>Allowing delegation without Cabinet approval could result in reduced oversight, potentially leading to decisions that are misaligned with broader governmental policies.</p>
Advisory Committees (PART 2- ADMINISTRATION Section 4)	Council can appoint advisory committees	Council cannot appoint advisory committees	<p>It is common for national conservation councils to appoint advisory committees. These committees are typically formed to provide specialized expertise, advice, and support on specific issues or projects.</p> <p>For example, advisory committees might include experts in environmental science, representatives from local communities, or</p>	<p>Advisory committees can help councils make more informed decisions by bringing in additional perspectives and knowledge. These committees can assist with tasks such as reviewing environmental impact assessments, developing conservation strategies, or advising on policy implementation.</p> <p>The ability to appoint advisory committees allows councils to be more flexible and responsive to emerging issues and ensures that a wide range of expertise is considered in decision-making processes. Without necessary scientific input specified in the NCA, environmental protection may be inadequate, leading to significant</p>

			stakeholders from relevant industries.	ecological harm and poorly informed policy decisions. This risks resulting in increased environmental degradation, loss of public trust, and substantial long-term economic costs.
Submission of Appeals (PART 7-GENERAL Section 39)	Appeals against Council decisions go to the Cabinet	<p>When it comes to appeals against the decision of the Council under the National Conservation Act, this states that “A person aggrieved by a decision of the Council (a) refusing an application for a permit or a licence; (b) imposing a condition on a permit or a licence; (c) amending a permit or licence; (d) revoking or suspending a permit or a licence” may “appeal against it to the Cabinet by serving on the Cabinet notice in writing of the intention to appeal and the grounds of the appeal.”</p> <p>The proposed change under the Bill will establish a Conservation Appeals Tribunal to hear appeals.</p>		<p>Establishing a Conservation Appeals Tribunal to hear appeals instead of the Cabinet could have several potential drawbacks:</p> <p>Increased Bureaucracy: Setting up a new tribunal could introduce additional layers of bureaucracy, potentially slowing down the appeals process.</p> <p>Resource Allocation: Establishing and maintaining a tribunal requires resources, including funding, personnel, and administrative support. This could divert resources from other conservation efforts.</p> <p>Consistency and Expertise: The Cabinet may have broader expertise and a more comprehensive understanding of national policies and priorities. A specialised tribunal might lack this broader perspective, potentially leading to decisions that are less aligned with overall governmental strategies.</p> <p>Access to Justice: If the tribunal is not easily accessible or if the process is perceived as more complex, it could deter individuals from filing appeals. This might limit the ability of aggrieved parties to seek redress.</p> <p>Potential for Delays: The tribunal might face delays in appointing members or in its operations, which could result in longer waiting times for appeals to be heard and resolved.</p> <p>Legal and Procedural Challenges: The establishment of a new tribunal could lead to initial legal and procedural challenges, including the need to develop new rules and guidelines for</p>

				its operation.
Obligation of Entities to Comply with the Act (section 41 - general obligations)	All government entities, including the Cabinet, must comply	All government entities, except the Cabinet, must comply	It is quite common for conservation acts and similar environmental legislation to include an obligation for all relevant entities to comply with the provisions of the act. This ensures that the goals of the legislation, such as protecting natural resources and promoting sustainable practices, are consistently upheld across all levels of government and other involved parties. Some derogations are given for circumscribed national security and defence activities in some developed nation jurisdictions.	<p>This proposed change appears to have the effect that the Cabinet would not have to “ensure that its decisions, actions and undertakings are consistent with and do not jeopardise the protection and conservation of a protected area or any protected species or its critical habitat.” This potentially large loophole sets up the risk of reduced checks and balances in public decision-making.</p> <p>The current NCA ensures that Cabinet is complying with it's obligations under Section 18 of the Cayman Islands Constitution: 18.—(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.</p>
Environmental Impact Assessment (PART 7-GENERAL Section 43)	Council may require an EIA during consultations or before granting approval	Council may require an EIA during consultations or upon receiving a request for approval	In Jamaica Sections 9 and 10 of the Natural Resources Conservation Authority (NRCA) Act of 1991 give National Environment and Planning Agency the authority to request an EIA as part of a permit application. EIAs are conducted regularly in Jamaica. NEPA oversees the EIA process and requires them for projects that could significantly impact the environment. E.g housing developments, resort expansions, and infrastructure projects.	<p>The issue lies in the composition of the council, as there are no safeguards for triggering Environmental Impact Assessments (EIA). Formal thresholds are written into law, making the council members crucial substitutes for these checks.</p> <p>Removing key individuals from the council undermines the robustness and reliability of the EIA process and therefore public access to information and potential public participation. Each removal erodes the checks and balances integral to the system, compromising the effectiveness of environmental protection measures and the ability of the public to understand and participate.</p>

<p>Judicial Review Proceedings ((PART 7-GENERAL Section 44)</p>	<p>Any person can apply for judicial review of acts or omissions under the Act</p>	<p>Legal proceedings require Attorney General's approval</p>	<p>The approval process for judicial review proceedings can vary depending on the jurisdiction and the specific legal framework in place. Generally, the following entities are involved:</p> <p>Courts: In many jurisdictions, judicial review proceedings are initiated directly by the courts. An individual or entity seeking judicial review must file a petition or application with the appropriate court, which then decides whether to grant permission for the review based on the merits of the case.</p> <p>Administrative Procedure Acts (APA): In some countries, such as the United States, the Administrative Procedure Act provides a framework for judicial review of agency actions. Under the APA, individuals or entities can seek judicial review if they have suffered a legal wrong or been harmed by an agency action.</p> <p>Attorney General or Similar Authorities: In certain jurisdictions, the approval of the Attorney General or a similar authority may be</p>	<p>This appears to require the Attorney General's approval to initiate a judicial review concerning the Act. The Boggy Sands Judicial Review involved a dispute between the National Conservation Council (NCC) and the Central Planning Authority (CPA) over a planning permission decision for a property on Boggy Sand Beach. The NCC challenged the CPA's decision to grant planning permission, arguing it posed a threat to the marine park. The Grand Court ruled in favour of the NCC, affirming its power to direct the CPA to refuse planning applications that have adverse environmental impacts.</p> <p>The proposed amendments to the National Conservation Act (NCA) could significantly impact cases like the Boggy Sands Judicial Review. These amendments aim to reduce the powers of the NCC and increase the influence of the Cabinet and the CPA. This could potentially weaken the NCC's ability to enforce environmental protections and prioritise long-term public interest over private development.</p> <p>The introduction of the Attorney General in this process risks a potential conflict of interest due to their dual mandate of serving the interests within the Government and Legislative Assembly.</p>
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Current weaknesses of the National Conservation Act

The National Conservation Act of the Cayman Islands currently has several weaknesses that undermine its effectiveness in protecting the environment. One significant issue is the limited authority of the National Conservation Council (NCC), which reduces the input of scientific expertise and information in the decision-making process. This allows for unchecked development that could harm critical habitats which the law aims to safeguard. Additionally, the lack of mandatory Environmental Impact Assessments (EIA) for certain projects –common practice in EIA legislation – means that potentially damaging activities can proceed without thorough scientific scrutiny and public participation. These weaknesses compromise the act's ability to balance economic development with environmental protection, leading to irreversible damage to the islands' public natural resources. The act has many strengths, however the proposed amendments would only weaken the act further, constraining its ability to achieve its objectives and reduce the ability of the public to be informed by science and participate adequately.