

# **Central Planning Authority**

**Agenda** for a meeting of the Central Planning Authority to be held on **13 February 2024 at 10:00am** in Conference Room 1038, 1st Floor, Government Administration Building, 133 Elgin Avenue

## **5<sup>th</sup> Meeting of the Year**

**CPA/05/24**

Mr. Ian Pairaudeau (Chair)

Mr. Handel Whittaker (Deputy Chair)

Mr. Joshua Bernard

Mr. Gillard McLaughlin

Mr. Charles Russell Jr.

Mr. Peterkin Berry

Mr. Peter Campbell

Mr. Kenneth Ebanks

Ms. Danette McLaughlin

Ms. Shakina Bush

Ms. Christine Maltman, MCIP, AICP

Ms. Celecia Bancroft

Mr. Ashton Bodden

Mr. Haroon Pandohie (Executive Secretary)

Mr. Ron Sanderson (Deputy Director of Planning - Current Planning)

1. Confirmation of Minutes & Declarations of Conflicts/Interests
2. Applications
3. Development Plan Matters
4. Planning Appeal Matters
5. Matters from the Director of Planning
6. CPA Members Information/Discussions

## **List of Applications Presented at CPA/05/24**

- 2.1 HIGH ROCK 67 LTD. (Abernethy & Associates) Block 67A Parcel 44 (P22-1133) (\$113,103) (NP) 5**
- 2.2 INVICTA CONSTRUCTION LTD. (Abernethy & Associates) Block 74A Parcel 88 (P23-0610) (\$158,034) (NP) 17**
- 2.3 CAROLYN CHALONER (Johnson Design + Architecture) Block 4E Parcel 52 (P23-0690) (\$2,300,000) (EJ) 42**
- 2.4 ELBERT EUGENE CONNOR (Roland Bodden & Company) Block 66A Parcel 10 (P23-0617) (\$7,000) (NP) 49**
- 2.5 BON CREPE LTD. (Abernethy & Associates) Block 66A Parcel 20 & Block 69A Parcel 51 (P23-0679) (\$150,000) (NP) 52**
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- 2.6 LEGOLAND REAL ESTATE LTD. (Arco) Block 14BJ Parcels 7 to 11 & 16 and Block 14E Parcel 661 (P23-1098) (\$95.0 million) (NP) 69**
- 2.7 ODIE C. DONALD (Darius Development) Block 43D Parcel 125 (P23-1058)(\$300,000) (JS) 76**
- 2.8 BRIAN EARL (Jovan Kerr) Block 56C Parcel 90 (P23-0400) (\$200,000) (NP) 89**
- 2.9 PATRICK STREETE (GMJ Home Plans) Block 4E Parcel 688 (P23-0523) (\$98,000) (EJ) 97**
- 2.10 CHRIS LAWSON (Tropical Architectural Group Ltd.) Block 4B Parcels 109, 110, 111, 112, 113, 114, 768, 767, and 764 (P20-0243) 102**
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- 2.13 GREEN TEA LIMITED (John Doak Architecture) Block 15D Parcel 168 (P23-0485) (\$50,000) (EJ) 111**
- 2.14 CHRISTOPHER & ELIZABETH STRINGER (Johnson Design) Block 57A Parcel 28 (P23-0561 + P23-0122) (\$950,150) (EJ) 123**
- 2.15 MARTIN TROTT (MKS International) Block 44B Parcel 6 (P23-0793) (\$75,000) (KM) 135**
- 2.16 BEVERLEY & TONY BERNARD (PPDS) Block 38B Parcel 163 (P23-1175) (\$1,000) (MW) 148**
- 2.17 TONIE BROWN (ABERNETHY & ASSOCIATES LTD.) Block 69A Parcel 84 (P23-0535) (\$5,654) (MW) 153**

- 2.18 CAYMAN PROPERTY INVESTMENTS LTD. (MJM Design Studio) Block 5B Parcel 151 (P23-0294) (\$11,000,000) (MW) 158**
- 2.19 DAVENPORT DEVELOPMENT LTD. Block 72C Parcel 290 (P23-0623) (\$3.2 million) (NP) 161**
- 2.20 ADRIAN & ORLEE EBANKS (TSC Architecture) Block 5C Parcel 244 (P23-0497) (\$780,000) (EJ) 171**
- 2.21 RONALD BOLT Block 71A Parcel 59 (P23-1085) (\$5,000) (NP) 180**
- 2.22 JUDY MOLINA (Shoreline Construction Ltd) Block 75A Parcel 355 (P23-0585) (\$100,000.00) (EJ) 183**
- 2.23 LUIS REGO RIVERS (AE Designs) Block 4B Parcel 666 (P23-0865) (\$70,000) (NP) 184**
- 2.24 JASON EBANKS (TSC Architecture) Block 43D Parcel 25 (P23-0945) (\$12,000) (NP) 186**
- 2.25 JAMES MILLER (3D Kyube) Block 38B Parcel 169 (P23-0277) (\$10,000) (NP) 187**
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- 2.31 MATTHEW R GOUCKE. Block 17A Parcel 17 (P23-0598) (\$4,500,000) (AS) 198**
- 2.32 PRESTIGE MOTORS LTD. (Design Cayman) Block 20B Parcel 384 (P23-1057) (\$20,000) (NP) 201**

## APPLICANTS ATTENDING THE AUTHORITY'S MEETING

<b>Applicant Name</b>	<b>Time</b>	<b>Item</b>	<b>Page</b>
High Rock 67 Ltd	11:00	2.1	5
Invicta subdivision	11:30	2.2	17
Carolyn Chaloner	1:00	2.3	42
Elbert Connor	1:30	2.4	49
Bon Crepe	2:00	2.5	52

### 1.1 Confirmation of Minutes CPA/04/24 held on 31<sup>st</sup> January 2024

### 1.2 Declarations of Conflicts/Interests

<b>Item</b>	<b>Member</b>



## **2.0 APPLICATIONS**

### **APPEARANCES (Items 2.1 to Item 2.5)**

#### **2.1 HIGH ROCK 67 LTD. (Abernethy & Associates) Block 67A Parcel 44 (P22-1133) (\$113,103) (NP)**

Application for a 138 lot subdivision.

**Appearance at 11:30 a.m.**

#### **FACTS**

<i>Location</i>	High Rock Drive, East End
<i>Zoning</i>	<b>AG/RES</b>
<i>Notification Results</i>	No objectors
<i>Parcel size</i>	39 acres
<i>Parcel size required</i>	10,000 sq. ft. for dwellings 25,000 sq. ft. for apartments
<i>Parcel width required</i>	80 feet for dwellings 100 feet for apartments
<i>Proposed lot sizes</i>	10,010 sq. ft. to 15, 610 sq. ft.
<i>Proposed Lot Width</i>	70 feet and above
<i>Current use</i>	Vacant

#### **BACKGROUND**

May 24, 2023 (CPA/12/23; Item 2.5) – The Authority resolved to adjourn the application for the following reasons:

- 1) In order to properly consider the application, the Authority requires written comments from the Department of Agriculture and updated comments from the National Roads Authority.
- 2) The applicant is required to submit revised plans showing the proposed lots with a minimum lot width of 80 feet.

**Recommendation:** Discuss Planning Permission for the following reasons:

- 1) East End Water Lens

- 2) Lot Width (under width lots vs 80')
- 3) Road Connections to the East & South.
- 4) Proposed LPP area (4.97 % vs 5 % required)
- 5) Triangular Shaped Parcels
- 6) NRA Comments

### **AGENCY COMMENTS**

Agency comments received to date are provided below.

#### **Department of Agriculture**

*Subject to your query contained in the email dated March 11,2023, re “Proposed Subdivision”, please be informed that a site assessment was carried out by the Department of Agriculture on the property located at Block 67A, Parcel 44 on March 13,2023.*

*As per the documentation provided the said parcel of land is zoned as Agricultural Residential, in its present state. This information was gathered by utilising the Agricultural land capability maps of the Cayman Islands. The findings are as outlined in the points below.*

- 1. The land is located in an area that has been designated class 111 soil type. This type of land includes soils that are suitable for cultivation but with strong limitations.*
- 2. The natural vegetation is mangrove based on where we could stand so it also appears to be swampy in nature*
- 3. The land was not accessible in the current state*
- 4. The land sits above the edge of the East End Water lens. The availability of ground water for irrigation purposes increases the Land Use Capability.*

*In summary, the limitations to commercial agricultural activity on this parcel of land are severe without modification. Hence our finding is that the land, in its present state, is unsuited to traditional commercial agricultural activities unless heavy modification is done.*

*Some Pictures have been included to provide supporting visual.*



*Drone shot of the area provided by Shawn Lafleur Cayman Structural Group, Ltd.*







## **Department of Environment (January 18, 2023)**

*This review is provided by the Director of the Department of Environment (DoE) under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*

### *Legal Status & Benefits of Mangroves*

*The entire 39-acre application site is primary habitat classified as seasonally flooded mangrove forests and woodland on the DoE's habitat mapping layer. The applicant is reminded that mangroves are Schedule 1, Part 2 Protected Species under the National Conservation Act (NCA) with an adopted Conservation Plan. It is an offence to remove mangroves unless permission is explicitly sought to remove them either through the granting and implementation of planning permission or a National Conservation Council Section 20 permit. The Mangrove Species Conservation Plan can be downloaded at the following link: <https://conservation.ky/wp-content/uploads/2021/01/Species-Conservation-Plan-for-Mangroves-FINAL.pdf>.*

*Mangrove forests are a critical part of our natural environment. They provide ecosystem services (benefits to humans) such as flood control and carbon sequestration, assisting to mitigate the effects of climate change. They function as natural sponges that trap and slowly release surface water. As one of the most productive terrestrial ecosystems, mangrove wetlands are extremely biodiverse and provide habitat and food for an immense variety of species. Inland wetlands in urban areas are valuable to the surrounding development, counteracting the greatly increased rate and volume of surface-water runoff from areas of hardstanding and buildings. Trees, root mats, and other wetland vegetation also slow the speed and distribution of stormwater. This combined water storage and braking action lowers flood heights and reduces erosion. In addition, inland wetlands improve water quality by filtering, diluting, and degrading toxic wastes, nutrients, sediments, and other pollutants.*

*Mangroves provide natural infrastructure protection by preventing erosion and absorbing storm surge impacts during extreme weather events such as hurricanes. They are also an important natural asset for the Cayman Islands and form part of Cayman's Natural Capital Accounts. Mangrove wetlands are extremely effective at sequestering carbon from the atmosphere and serve as carbon sinks. The large-scale removal of significant tracts of mangrove habitat reduces the Island's natural carbon sequestration potential and the removal of mature vegetation and de-mucking of mangrove sites releases captured carbon into the atmosphere. The removal of mangrove habitats reduces the extent and value of this natural asset and removes the ecological services the habitat currently provides.*





*Figure 1: Aerial image showing the subject parcel highlighted in red. Note that the parcel consists entirely of seasonally flooded mangrove forests and woodland (Source: Cayman Land Info, 2018).*

#### *The Urbanisation of Areas Zoned as Agricultural/Residential*

*The DoE notes that the current subdivision proposal would introduce a density of development that is new for this area. The subject parcel is currently zoned for Agriculture/Residential and located over the East End freshwater lens. The application site is approximately 39 acres. Under the Development and Planning Regulations (2022), the maximum number of houses per acre in the Agriculture/Residential zone is two (2). Therefore, using this parameter from the Development and Planning Regs, the subject parcel would have the capacity for 78 houses, however, the current proposal is for 137 residential lots. This level of development will have corresponding impacts on the environment.*

*With the proposed conversion of wetland habitat and increased urbanisation, drainage must be properly assessed. The clearing and filling of this site could result in flooding in the surrounding area as it will reduce the site's natural capacity to retain stormwater. A stormwater management plan should be provided for the area, as a part of the application, to ensure that the water potentially being displaced by the development of the land will not impact the wider area.*

*We also recommend that the applicant incorporates Sustainable Drainage Systems (SuDS) into the stormwater management plan for the site to mitigate against the inundation of the surrounding area. SuDs are drainage solutions that provide an alternative to the direct channelling of surface water through pipes and deep wells. By mimicking natural drainage regimes, SuDS aim to reduce surface water flooding, improve water quality and enhance the amenity and biodiversity value of the environment. SuDS achieve this by lowering flow rates, increasing water storage capacity and reducing the transport of pollution to the water environment.*

#### *Source of Fill Impacts*

*Should the CPA be minded to approve the application, it is important to note that the site will require a significant amount of fill. The source and quantity of fill should be identified by the applicant prior to the commencement of any site works to determine whether the proposal is feasible. This will help to avoid a situation where the mangroves are destroyed but the proposed subdivision cannot be filled or future proposals for development cannot be completed.*

#### *DoE Recommendations & Conditions*

*Land clearing should be reserved until the development of the resultant subdivided lots is imminent through the granting of planning permission for development on each particular lot. This allows the primary habitat to continue to provide its ecosystem functions. Given the scale of this development, and that there has not been a demonstrated need for this level of residential subdivision lots in this area of East End, it is especially important not to prematurely clear the lots.*

*Leaving the native vegetation intact on the residential lots will also allow the individual lot owners to retain as much native vegetation as possible to incorporate into the landscaping scheme. Native vegetation is best suited for the habitat conditions of the Cayman Islands, resulting in vegetation that requires less maintenance which makes it a very cost-effective choice. Wetland vegetation in particular is useful for managing on-site stormwater management and drainage.*

*If the Central Planning Authority or Planning Department is minded to grant planning permission for the proposed subdivision, the following should be included as conditions of approval:*

- 1. There shall be no land clearing, excavation, filling, or development of the resultant residential lots without planning permission for such works being granted.*

#### **Water Authority Cayman**

*Please be advised that the Water Authority's requirements for this development are as follows:*

##### **Wastewater Treatment:**

- The developer is advised that wastewater treatment and disposal requirements for built development are subject to review and approval by the Water Authority.

#### Stormwater Management

This development is located over the **East End fresh water lens** or within the 500m buffer zone of the lens. In order to protect the fresh water lens, the Water Authority requests that stormwater drainage wells are drilled to a maximum depth of **80ft.** instead of the standard depth of 100ft as required by the NRA.

#### Water Supply:

The proposed development site is located within the Water Authority's piped water supply area.

- The developer shall contact Water Authority's Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the piped water supply.
- The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.
- The developer shall install the water supply infrastructure within the site, under the Water Authority's supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority's web page: <http://www.waterauthority.ky/water-infrastructure>.

The Authority shall not be held responsible for delays and/or additional costs incurred by the developer due to the developer's failure to provide sufficient notice to the Authority.

### **National Roads Authority**

#### September 2023 comments

*As per your email of September 25th, 2023, the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

#### *General Issue:*

*"The points of access onto a throughway from a subdivision shall be kept to the minimum practicable and not less than 1/4 mile apart." However, per our meeting with the applicant on July 20th, 2023, the NRA will in this case permit a maximum of three (3).*

*The NRA requests that the CPA have the applicant redesign the sub-division to comply with the above-listed requirement.*

#### *Stormwater Management Issues*

*A comprehensive drainage plan needs to be provided by the applicant for the entire project.*



*The applicant shall demonstrate that the Stormwater Management system can be designed to include storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and ensure that surrounding properties that are lower, and nearby public roadways are not subject to stormwater runoff from this site.*

#### *Infrastructure Issues*

*The NRA advises the CPA to require the developer to provide for signage (stop signs, etc.), street lighting and any other traffic calming measures on the proposed roads of the subdivision. Once the roadway has been taken over as a public road, the NRA can then assume this responsibility. This site will need a stop sign with stop bars at all junctions on High Rock Drive.*

*A thirty (30) ft. wide road parcel needs to be provided in order to have adequate access as the NRA does not endorse the use of vehicular ROWs.*

*The subdivision's road base shall be constructed to NRA minimum design and construction specifications for subdivision roads - this includes elevations, minimum longitudinal slopes and minimum cross fall of minus 2 percent from the centerline to the shoulder.*

*The roadway shall be Hot Mix Asphalt (HMA). The NRA shall inspect and certify the road base construction prior to HMA surfacing activities.*

*All internal roadway curves (horizontal alignment) shall be no less than 46 feet centerline radius.*

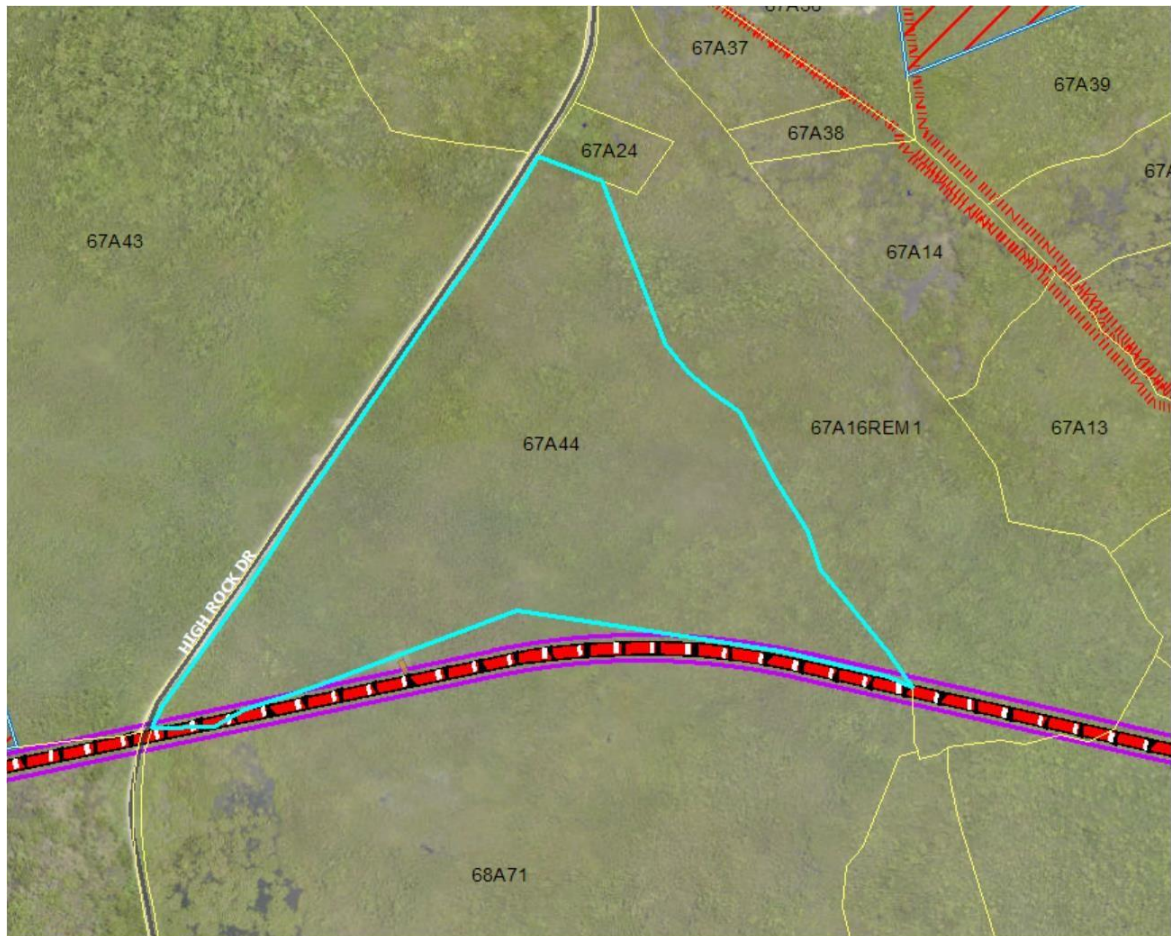
#### January 2023 comments

*As per your email of December 28th, 2022, the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

#### *General Issues:*

*Please note that an eighty (80)ft minor arterial road off of the East West Arterial approved under Section 26 (4)(a) of the Roads Law on May 3rd, 2005 partially traverses and abuts the southern boundary of the subject lands as depicted on the following schematic map. The applicant's agent can liaise with the NRA for the road alignment*

*NRA for the road alignment*



*High Rock Drive is classified as a Collector road and has a posted speed limit of 30 miles per hour. The subject parcel has about 2100 feet of frontage onto High Rock Drive. Attributes and characteristics of “Collector” roadways are that they*

- (a) provide access to primary arterial roads and secondary arterial roads; and*
- (b) permit convenient circulation of traffic within residential neighbourhoods and commercial and industrial areas.*

*On that basis, the NRA advises the Central Planning Authority that the proposed subdivision should not have any house lot with direct access onto High Rock Drive – access should be from an internal roadway of the subdivision.*

*Given the number of house lots proposed for the subject lands, a northbound turning lane with storage for four (4) vehicles and appropriate taper should be provided – the land area for such geometric requirement should come from the subject lands.*

*Please have applicant redesign the sub-division to comply with the access and geometric standards of the Design and Construction Specifications for Subdivision Roads & Property Development, available [here](#).*

## **APPLICANT'S LETTER**

*I am writing to request your approval for smaller house lots for a proposed subdivision located in High Rock Road. The proposed development would be situated on a large parcel of land and is intended to provide low density residential lots/housing options for residents.*

*The current zoning regulations for the area only permit house lots to be a minimum of 80 feet wide. However, we propose that the lots be reduced to 70 feet wide. This small reduction in size will allow us to include more units in the development, increasing the overall affordability of the lots. Additionally, the smaller lots will be more manageable for first-time homeowners and families with limited means.*

*We understand that any development must be consistent with the overall goals and guidelines of the Cayman Island Planning Board. That is why we have designed the development to include ample green space and infrastructure that will support the needs of the residents.*

*Furthermore, the smaller house lots will have a minimal impact on the environment and local infrastructure. The design of the subdivision has been planned with great care and attention to detail, and all necessary measures will be taken to ensure that the development is sustainable and in compliance with all relevant regulations*

*I understand that the Central Planning Authority has the responsibility to ensure that all developments in the Cayman Islands are in the best interest of the community as a whole. I believe that the proposed smaller house lots will benefit both the community and the individuals looking to buy or build a home in High Rock.*

*In conclusion, we are asking for a variance on smaller residential lots. We believe this can be a viable solution for increasing the availability of housing, providing more housing options, and supporting sustainable development. I hope this information will be helpful in considering the proposal.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The subject property is located in East End, on the east side of High Rock Drive.

The property is currently vacant and the proposal is to create 136 new residential lots, one parcel (77,740 square feet) as Lands for Public Purposes, and one road parcel.

Proposed residential lot sizes range from 10,010 square feet to 15,610 square feet.

### **Zoning**

The property is zoned Agricultural/Residential.

### **Specific Issues**

#### **1) East End Water Lens**

It appears that the northern portion of the subject parcel is located within the East End Water Lens. In this regard, Section 21 of the Regulations state the following:

“Two houses per acre may be built on agricultural/residential land but if the Authority is satisfied that any such land is not situated over a water lens and is not particularly suited to agriculture, it may permit any development which complies with the requirements for low density residential areas.”

The Department is of the opinion that proposed lots 23 and 24 as well as 89 to 92 are situated over a water lens and should not be permitted to comply with the Low Density Residential requirements.

## **2) Lot Width**

The vast majority of the proposed lots have a minimum width of 70 feet.

Regulation 9(8)(g) from the Low Density Residential zone requires a minimum lot width of 80 feet.

Once again referring to Regulation 21 noted above in item 1, the Department is of the opinion that the Authority does not have the ability to vary the minimum lot width in an agricultural/residential zone.

## **3) Road Connection to the East**

Should the Authority be mindful to grant planning permission, the Department would recommend future road link blocks to lands located to the east and south be included in the proposed plan of subdivision. This would help ensure good traffic patterns should the abutting lands develop with residential uses in the future. It is noted that there is ample room to comply with this recommendation.

## **4) LPP Area**

The subject parcel consists of 39 acres or 1,698,840 square feet.

Regulation 28(1) permits the Authority to set aside a maximum 5 percent of the gross area of land as Lands for Public Purposes.

Based upon the subject lot area, a minimum 84,942 square feet is required.

The applicant is proposing an LPP block of 77,740 square feet (4.6 %).

There is a difference of 0.4 % that the Authority should consider as part of the deliberations.

## **5) Triangular Shaped Parcels**

The proposal includes several parcels that are triangular in shape (43,44,69,58,59) and the Department is not able to confirm whether the subject lots will be able to provide a building envelope when setbacks are applied.

The Authority should discuss this matter.

## **6) NRA Comments**

The NRA has noted that High Rock Road is a collector road and that lots should not have access driveways onto the road. The Planning Department concurs with this recommendation.

In addition, the NRA has recommended that turning lanes be provided at both entrance points to the subdivision. The Planning Department concurs with this recommendation.

The Authority should discuss both aspects of the NRA recommendation noted above.

### **SUPPLEMENTARY ANALYSIS**

The applicant has submitted a revised subdivision plan.

There are now 133 residential lots proposed. All lots would have a minimum 10,000 square feet in area with the majority having 80 feet in width.

The application is also proposing three shared entrances along the existing High Rock Drive.

It should be noted that the NRA still has concerns with the proposal and that the Department of Agriculture has no concerns.

## **2.2 INVICTA CONSTRUCTION LTD. (Abernethy & Associates) Block 74A Parcel 88 (P23-0610) (\$158,034) (NP)**

Application for a 184 lot subdivision.

**Appearance at 11:30 a.m.**

### **FACTS**

<i>Location</i>	Austin Connolly Drive, East End
<i>Zoning</i>	<b>LDR &amp; AG/RES</b>
<i>Notification Results</i>	One objector
<i>Parcel size</i>	38 acres
<i>Parcel size required</i>	10,000 sq. ft. for dwellings 25,000 sq. ft. for apartments
<i>Parcel width required</i>	80 feet for dwellings 100 feet for apartments
<i>Proposed lot sizes</i>	7,195 sq. ft. to 38,640 sq. ft.
<i>Proposed Lot Width</i>	44'2" and above
<i>Current use</i>	Vacant

### **BACKGROUND**

October 25, 2023 (CPA/25/23; Item 2.1) – The Authority resolved to adjourn the application at the applicant's request.

December 13, 2023 (CPA/30/23: Item 2.3) – The Authority resolved to adjourn the application and re-invite both the applicant and objector to address the Authority in person.

**Recommendation:** Discuss Planning Permission for the following reasons:

- 1) Concerns of the Objector
- 2) Lot Width (most lots under 80')
- 3) Lot Area (most lots under 10,000 sq. ft.)
- 4) Road Connections to adjoining parcels
- 5) NRA Comments
- 6) Lots 174 to 179 not perpendicular to the road

### **AGENCY COMMENTS**

Agency comments received to date are provided below.

#### **Department of Environment**

December 18, 2023

*This review is provided by the Director of the Department of Environment (DoE) under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*

*We acknowledge the applicant's cover letter, the phasing approach to the subdivision, and the applicant's proposal to retain some of the existing primary habitat on site. Should the subdivision be approved, we support the applicant's proposal for a phased approach and we support their proposal to not clear the entire site and the inclusion of a covenant regarding not clearing the parcel without the relevant government approvals. We are encouraged to see the applicant's recommendation for prospective buyers/owners of the resultant parcels to retain a 5-foot native vegetation buffer on the sides and front of the property and a 10-foot native vegetation buffer at the back of the property which equates to approximately 25% of native vegetation per property. Should the application be approved, we recommend only the roads within Phase 1 of the plan are cleared at this time and that the roads for Phases 2 and 3 be retained in their natural state until such time that the phases are to be implemented. Whilst we appreciate the applicant's vision to retain the native vegetation, this is difficult to enforce in practice when the resultant parcels are sold. Nevertheless, we support the applicant's aim to integrate the existing environment into the subdivision proposal.*

*Although the applicant has made an attempt to address the DoE's direct environmental concerns especially during construction, apprehensions remain regarding the strategic overview. When considering the approval of a residential subdivision, a strategic review of the infrastructure requirements to build-out all of the subdivision lots must also be undertaken. The approach to real estate in Cayman includes the reasonable assumption that residential subdivision lots can be developed with residential properties in the future. It would be remiss to grant permission for a subdivision, permit the sale of the resultant parcels, but then not permit that individual to develop the parcel due to demands on infrastructure. Therefore the strategic decision to have 180 additional subdivision lots in a subdivision of this size in East End primary habitat needs to be considered now.*



*For convenience, we reiterate our previous comments provided to the Planning Department in a Memo dated 21 August 2023 below:*

### ***Ecological Overview***

*The application site consists of a mixture of primary dry forest and woodland and primary dry shrubland habitat. These habitats are of high ecological value and provide a biodiverse habitat for native wildlife including Grand Cayman Blue Iguanas (*Cyclura lewisi*). Part of the application site is also located over the East End water lens.*

### ***Importance of Primary Habitat***

*Primary habitat is mature habitat in its natural state, otherwise uninfluenced by human activity where ecological processes are not significantly disturbed. These habitats are often very old, existing long before humans, and may consist of many endemic and ecologically important species.*

*Primary habitat is in severe decline and becoming a scarce and highly threatened resource as a result of land conversion for human uses. For this reason, the DoE does not support speculative or wholesale clearing of subdivision sites. In principle, land clearing should be reserved until the development of individual lots is imminent (through the granting of planning permission for development on those particular lots). This allows the opportunity for the individual lot owners to retain as much native vegetation as possible. Native vegetation is best suited for the habitat conditions of the site and requires less maintenance which makes it a very cost-effective choice.*



*Figure 1: Drone imagery of the application site showing the pristine primary habitat within the site (Source: DoE, 2023).*





*Figure 2: Drone imagery of the application site showing the pristine primary habitat within the site. Silver Thatch Palms are slow-growing trees, and the height of the palms indicates the vegetation is very old (Source: DoE, 2023).*



*Figure 3: Drone imagery of the application site showing the pristine primary habitat within the site. The section of lower-height vegetation is primary semi-permanently flooded grasslands/ sedge wetlands (Source: DoE, 2023).*

*Primary habitat and native vegetation can be retained and used in a variety of ways on a property:*



- *It can be retained along parcel boundaries and between buildings to serve as privacy, noise and sound buffers and screening.*
- *It can be incorporated into the landscaping schemes for low-maintenance low-cost landscaping. Native plants are best suited for the conditions of the site, including the temperature and amount of rainfall. They are climate-appropriate and require less maintenance and irrigation.*
- *It can serve as an amenity, providing green space and shade for those who live nearby or on the property.*
- *It can remain as a habitat for endemic wildlife such as anoles, birds and butterflies. This habitat helps to contribute to the conservation of our local species.*
- *It can assist with drainage, directly by breaking the momentum of rain, anchoring soil, and taking up water and indirectly by keeping the existing grade and permeable surfaces.*
- *It can help reduce carbon emissions by leaving the habitat to act as a carbon sink and allow natural processes to remove carbon dioxide from the atmosphere. Destroying native vegetation releases carbon stored in the plant material, soil and peat.*
- *When located in an area of wider primary habitat, wildlife corridors can be created connecting areas of a habitat that would have otherwise been isolated through development, allowing for the movement of animals and the continuation of viable populations.*

### ***Impacts on Blue Iguanas***

*The subject parcels fall within the natural distribution range of the Blue Iguanas that have been released into the Colliers Wilderness Reserve and their presence has been confirmed on Colliers Wilderness Reserve Rd. and to the south. Blue Iguanas are listed as endangered on the IUCN Red List and they are a Part 1 protected species under the National Conservation Act (2013) making them a species 'protected at all times'.*

*Blue Iguanas are endemic to Grand Cayman meaning they are unique to Cayman and found nowhere else on Earth. They are an iconic Caymanian flagship species and their presence serves as a valuable tourism asset. Blue Iguanas typically live solitary, territorial lives. As they recover from the brink of extinction, and reproduce and seek to establish territory, the urbanisation of valuable primary habitat continues to be a concern for the future of our wild population that rely on this habitat to forage, shelter and nest.*

*Heavy machinery can crush or bury iguanas and their nests. It is therefore crucial that **no mechanical clearing, excavation or filling takes place prior to DoE consultation.** Should minor clearing be required, mechanical clearing must not take place during the Blue Iguana nesting season (1 June – 30 September yearly) without DoE consultation. Blue Iguanas can be easily startled and go into retreats where they would remain unseen, putting them at risk.*

## **Strategic Overview**

*The vast majority of the application site is zoned agriculture/residential with the smaller parcel (74A/98) being zoned low-density residential. However, most of the proposed lots do not meet the minimum lot size even for low-density residential.*

*Although the DoE can appreciate the need for affordable housing, there has not been a demonstrated need for a subdivision of this density in this area. The Government is actively working on an updated Development Plan for the country which is to consider population growth and sustainable development. Without an updated plan, a rezone of this scale is not justifiable. In the absence of an updated Development Plan providing a strategic framework for development, particularly large-scale proposals, the DoE strongly recommends that before determining this planning application, a comprehensive review of the 'need' for the subdivision of more parcels is undertaken. The impact of a further residential subdivision on existing infrastructure and the environment of the island should be properly considered and evaluated. The overall impact on the infrastructure and population of East End should also be considered given there would be significant pressure on the infrastructure and amenities in the area should the subdivision be built out.*

*We do not support the Central Planning Authority's position of clearing and filling all lots regardless of imminent development when granting permission for a subdivision. Natural habitat and native vegetation can be incorporated into parks, play areas, and amenity spaces to provide multiple benefits to a community, but that opportunity is lost when the area is prematurely cleared. There are subdivisions which were cleared and filled over 30 years ago and have never been developed, resulting in biodiversity loss, proliferation of invasive species and habitat fragmentation with no social or economic benefit to offset it. The site has a total of **52.4 acres of primary habitat**. If there is no intention to develop these lots, then there is no social benefit or improved living environment for the people of East End to set against the environmental harm from habitat fragmentation and loss, as well as the resource implications that result from the construction of roads and development of infrastructure for the subdivision.*

*There are environmental consequences from the continued approval of large-scale subdivisions similar to this. These include:*

- *The construction of the roads creates a direct loss of habitat by clearing and filling.*
- *The presence of the roads creates habitat fragmentation, which is a key driver of biodiversity loss because it makes natural areas smaller and more isolated from each other.*
- *The road provides easier access for invasive species such as rats, cats and dogs.*
- *There are 'edge effects' where the area directly next to the road is degraded by the presence of the roads. There are barriers to moving between fragments of habitat, changes to the community composition, and changes to aspects such as climate, sunlight, nutrients, and microclimate.*
- *The development of the resultant lots increases the above effects and increases the direct loss of habitat, habitat fragmentation, presence of invasive species, and impacts on surrounding areas.*

- *Issues with resource use with partially-developed, sprawled subdivisions serving only a small number of people.*

### ***DoE Recommended Conditions***

*For reasons highlighted throughout this review, the DoE **does not** support the approval of this application. Should the Central Planning Authority or Planning Department be minded to grant planning permission for the proposed subdivision, the DoE recommends the inclusion of the following conditions in the Planning approval to minimise impacts on Part I Protected Species and this important primary habitat.*

- 1. There shall be no land clearing, excavation, filling or development of the resultant parcels without planning permission for such works being granted.*
- 2. Any future development, clearing, filling or excavation of the resultant subdivided parcels shall be the subject of a separate consultation with the National Conservation Council.*

August 21, 2023

*This review is provided by the Director of the Department of Environment (DoE) under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*

### ***Ecological Overview***

*The application site consists of a mixture of primary dry forest and woodland and primary dry shrubland habitat. These habitats are of high ecological value and provide a biodiverse habitat for native wildlife including Grand Cayman Blue Iguanas (*Cyclura lewisi*). Part of the application site is also located over the East End water lens.*

### ***Importance of Primary Habitat***

*Primary habitat is mature habitat in its natural state, otherwise uninfluenced by human activity where ecological processes are not significantly disturbed. These habitats are often very old, existing long before humans and may consist of many endemic and ecologically important species.*

*Primary habitat is in severe decline and becoming a scarce and highly threatened resource as a result of land conversion for human uses. For this reason, the DoE does not support speculative or wholesale clearing of subdivision sites. In principle, land clearing should be reserved until the development of individual lots is imminent (through the granting of planning permission for development on those particular lots). This allows the opportunity for the individual lot owners to retain as much native vegetation as possible. Native vegetation is best suited for the habitat conditions of the site and requires less maintenance which makes it a very cost-effective choice.*



*Figure 1: Drone imagery of the application site showing the pristine primary habitat within the site (Source: DoE, 2023).*



*Figure 2: Drone imagery of the application site showing the pristine primary habitat within the site. Silver Thatch Palms are slow-growing trees, and the height of the palms indicates the vegetation is very old (Source: DoE, 2023).*





*Figure 3: Drone imagery of the application site showing the pristine primary habitat within the site. The section of lower-height vegetation is primary semi-permanently flooded grasslands/ sedge wetlands (Source: DoE, 2023).*

*Primary habitat and native vegetation can be retained and used in a variety of ways on a property:*

- *It can be retained along parcel boundaries and between buildings to serve as privacy, noise and sound buffers and screening.*
- *It can be incorporated into the landscaping schemes for low-maintenance low-cost landscaping. Native plants are best suited for the conditions of the site, including the temperature and amount of rainfall. They are climate-appropriate and require less maintenance and irrigation.*
- *It can serve as an amenity, providing green space and shade for those who live nearby or on the property.*
- *It can remain as a habitat for endemic wildlife such as anoles, birds and butterflies. This habitat helps to contribute to the conservation of our local species.*
- *It can assist with drainage, directly by breaking the momentum of rain, anchoring soil, and taking up water and indirectly by keeping the existing grade and permeable surfaces.*
- *It can help reduce carbon emissions by leaving the habitat to act as a carbon sink and allow natural processes to remove carbon dioxide from the atmosphere. Destroying native vegetation releases carbon stored in the plant material, soil and peat.*
- *When located in an area of wider primary habitat, wildlife corridors can be created connecting areas of a habitat that would have otherwise been isolated through development, allowing for the movement of animals and the continuation of viable populations.*

### ***Impacts on Blue Iguanas***

*The subject parcels fall within the natural distribution range of the Blue Iguanas that have been released into the Colliers Wilderness Reserve and their presence has been confirmed on Colliers Wilderness Reserve Rd. and to the south. Blue Iguanas are listed as endangered on the IUCN Red List and they are a Part 1 protected species under the National Conservation Act (2013) making them a species 'protected at all times'.*

*Blue Iguanas are endemic to Grand Cayman meaning they are unique to Cayman and found nowhere else on Earth. They are an iconic Caymanian flagship species and their presence serves as a valuable tourism asset. Blue Iguanas typically live solitary, territorial lives. As they recover from the brink of extinction, and reproduce and seek to establish territory, the urbanisation of valuable primary habitat continues to be a concern for the future of our wild population that rely on this habitat to forage, shelter and nest.*

*Heavy machinery can crush or bury iguanas and their nests. It is therefore crucial that **no mechanical clearing, excavation or filling takes place prior to DoE consultation**. Should minor clearing be required, mechanical clearing must not take place during the Blue Iguana nesting season (1 June – 30 September yearly) without DoE consultation. Blue Iguanas can be easily startled and go into retreats where they would remain unseen, putting them at risk.*

### ***Strategic Overview***

*The vast majority of the application site is zoned agriculture/residential with the smaller parcel (74A/98) being zoned low-density residential. However, most of the proposed lots do not meet the minimum lot size even for low-density residential.*

*Although the DoE can appreciate the need for affordable housing, there has not been a demonstrated need for a subdivision of this density in this area. The Government is actively working on an updated Development Plan for the country which is to consider population growth and sustainable development. Without an updated plan, a rezone of this scale is not justifiable. In the absence of an updated Development Plan providing a strategic framework for development, particularly large-scale proposals, the DoE strongly recommends that before determining this planning application, a comprehensive review of the 'need' for the subdivision of more parcels is undertaken. The impact of a further residential subdivision on existing infrastructure and the environment of the island should be properly considered and evaluated. The overall impact on the infrastructure and population of East End should also be considered given there would be significant pressure on the infrastructure and amenities in the area should the subdivision be built out.*

*We do not support the Central Planning Authority's position of clearing and filling all lots regardless of imminent development when granting permission for a subdivision. Natural habitat and native vegetation can be incorporated into parks, play areas, and amenity spaces to provide multiple benefits to a community, but that opportunity is lost when the area is prematurely cleared. There are subdivisions which were cleared and filled over 30 years ago and have never been developed, resulting in biodiversity loss, proliferation of*

*invasive species and habitat fragmentation with no social or economic benefit to offset it. The site is a total of **52.4 acres of primary habitat**. If there is no intention to develop these lots, then there is no social benefit or improved living environment for the people of East End to set against the environmental harm from habitat fragmentation and loss, as well as the resource implications that result from the construction of roads and development of infrastructure for the subdivision.*

*There are environmental consequences from the continued approval of large-scale subdivisions similar to this. These include:*

- The construction of the roads creates a direct loss of habitat by clearing and filling.*
- The presence of the roads creates habitat fragmentation, which is a key driver of biodiversity loss because it makes natural areas smaller and more isolated from each other.*
- The road provides easier access for invasive species such as rats, cats and dogs.*
- There are 'edge effects' where the area directly next to the road is degraded by the presence of the roads. There are barriers to moving between fragments of habitat, changes to the community composition, and changes to aspects such as climate, sunlight, nutrients, and microclimate.*
- The development of the resultant lots increases the above effects and increases the direct loss of habitat, habitat fragmentation, presence of invasive species, and impacts on surrounding areas.*
- Issues with resource use with partially-developed, sprawled subdivisions serving only a small number of people.*

### ***DoE Recommended Conditions***

*For reasons highlighted throughout this review, the DoE **does not** support the approval of this application. Should the Central Planning Authority or Planning Department be minded to grant planning permission for the proposed subdivision, the DoE recommends the inclusion of the following conditions in the Planning approval to minimise impacts on Part 1 Protected Species and this important primary habitat.*

- 1. There shall be no land clearing, excavation, filling or development of the resultant parcels without planning permission for such works being granted.*
- 2. Any future development, clearing, filling or excavation of the resultant subdivided parcels shall be the subject of a separate consultation with the National Conservation Council.*

### **Water Authority Cayman**

*Please be advised that the Water Authority's requirements for this development are as follows:*

### Wastewater Treatment

- *The developer is advised that wastewater treatment and disposal requirements for built development are subject to review and approval by the Water Authority.*

### Stormwater Management

- *This development is located over the (East End) fresh water lens or within the 500m buffer zone of the lens. In order to protect the freshwater lens, the Water Authority requests that stormwater drainage wells are drilled to a depth of 80ft instead of the standard depth of 100ft as required by the NRA.*

### Water Supply

*The proposed development site is located within the Water Authority's piped water supply area.*

- *The developer shall contact Water Authority's Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the piped water supply.*
- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- *The developer shall install the water supply infrastructure within the site, under the Water Authority's supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority's web page: <http://www.waterauthority.ky/water-infrastructure>.*

*The Authority shall not be held responsible for delays and/or additional costs incurred by the developer due to the developer's failure to provide sufficient notice to the Authority.*

### **National Roads Authority**

#### October 4, 2023 Email from NRA

*The only comment I had was the need for a 100ft taper and a 100 ft storage, please see attached.*





August 17, 2023

*As per your memo dated July 31st, 2023 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

#### *General Issues*

- *The NRA would like the applicant to provide a comprehensive phasing plan of the project.*
- *There is only one main access point to the development and the NRA is concerned that there are no other means of entry to the proposed subdivision. Applicant should provide at least 2 – 3 other means of entry to surrounding parcels.*

*-Per NRA's Design and Construction Specifications for Subdivision Roads & Property Development –*

#### *1. Section 2.2 Collector Roads*

*(a) provide direct access to residences and other property, and (c) provide access to the arterial road system.)*

#### *2. Section 5.1 - Access Requirements*

*All subdivisions are required to provide road connections to adjacent property for access or for future extensions*

- *For a subdivision with over 150 lots it is required for the applicant to provide a turning lane into the subdivision, which is possible as the owners also own the adjacent property 74A37.*

- *A comprehensive traffic calming plan will be required for a subdivision of this scale, where traffic controls are in place to mitigate speeding and other unwanted behaviours on the road.*

#### *Stormwater Management Issues*

*Stormwater control should be considered as an integral component of any subdivision or site development. It is the responsibility of the developer to ensure that the quantity of stormwater runoff is reduced and prevent uncontrolled runoff flow to buildings and large impervious surfaces that could cause flooding resulting in an environmental impact forming a breeding area for mosquitos. A comprehensive drainage plan needs to be provided by the applicant for the entire project.*

*The applicant shall demonstrate that the Stormwater Management system can be designed to include storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and ensure that surrounding properties that are lower, and nearby public roadways are not subject to stormwater runoff from this site.*

*This development is located over the East End fresh water lens or within the 500m buffer zone of the lens. In order to protect the fresh water lens, the Water Authority requests that stormwater drainage wells are drilled to a maximum depth of 80ft. instead of the standard depth of 100ft. as required by the NRA.*

#### *Infrastructure Issues*

*The NRA advises the CPA to require the developer to provide for signage (stop signs, etc.), street lighting and any other traffic calming measures on the proposed roads of the subdivision. Once the roadway has been taken over as a public road, the NRA can then assume that responsibility.*

*A thirty (30) ft. wide road parcel needs to be provided in order to have adequate access as the NRA does not endorse the use of vehicular ROWs.*

*The subdivision's road base shall be constructed to NRA minimum design and construction specifications for subdivision roads - this includes elevations, minimum longitudinal slopes and minimum cross fall of minus 2 percent from the centre line to the shoulder.*

*The roadway shall be HMA. The NRA shall inspect and certify the road base construction prior to HMA surfacing activities.*

*All internal roadway curves (horizontal alignment) shall be no less than 46' entre line radius. This requirement ensures that the minimum vehicle sweep for a standard garbage and/or fire truck can be accommodated by the site layout.*

#### **Department of Agriculture**

Comments not yet received.

## **OBJECTION LETTER**

*We own Block and Parcel 74A97 on Austin Conolly Rd, East End, Grand Cayman. We stayed there about five months out of the year, ever since we have owned it, with the exception of the Covid years.*

*We would like to voice our objection to Invicta Construction Limited's plan for Block and Parcel 74A88, 74A98 "A combination and subsequent 180 residential lot, 3 LPP lot, and 1 road lot subdivision.*

*To us, this represents a possible 360, or more, vehicles dumping traffic onto Austin Conolly Drive. I don't think this road could support this kind of an increase in traffic without creating other problems. We don't like the idea of having high density housing in the area. This is too many houses in such a small space.*

*Thank you for your consideration.*

## **APPLICANT'S LETTER**

*I am writing to formally request a variance for the subdivision of Block 74A Parcels 88 and 98 in East End. Our proposal seeks to change the current zoning classification from Low Density Residential Development to Medium Density Residential parcels. This variance is of paramount importance as it will allow us to reduce parcel sizes by approximately 33% and subsequently lower the price per parcel.*

*The primary objective of our project is to address the pressing need for more affordable housing options. By increasing the number of parcels through Medium Density*

*Residential zoning, we can significantly decrease the cost per parcel and make land more accessible to local residents at more affordable prices.*

*The proposed development entails several key components to achieve our affordable housing goals. Firstly, we estimate that the initial infrastructure costs, including land clearing, road filling, water supply installation, and road paving, will amount to approximately KYD\$5,000,000. However, by dividing these expenses among a larger number of buyers, we can reduce the individual cost per parcel and make homeownership within reach for a broader segment of potential purchasers.*

*In addition to the cash cost of the project, we would like to highlight the cost of the land itself for the roads and the 5% required for LPP. This equates to approximately 7.25 acres of the total 43.75 acres being utilized for the subdivision. We are committed to utilizing the land efficiently and ensuring that the development maximizes the available space while still meeting the requirements set forth for having LPP.*

*Moreover, we are dedicated to offering some parcels with Owner Financing options to qualified purchasers. This initiative will empower individuals who may face challenges in securing traditional financing methods to become homeowners and invest in their properties.*

*Furthermore, our project team is diligently working on designing homes with affordable options within the development. These housing plans will cater to the specific needs of individuals and families seeking more economical housing solutions in the area. By*

*providing affordable house plans, we aim to further reduce the overall cost of the development and make it more accessible to potential buyers.*

*To ensure a comprehensive and responsive approach, we envision implementing this project in 4 to 5 phases, contingent upon the level of demand generated. This phased strategy will enable us to gauge the market response and align the development with the preferences and requirements of the local community effectively.*

*In light of the aforementioned reasons, we kindly request the Central Planning*

*Authority's careful consideration of our project. By granting the variance for Medium Density Residential parcels, we will be able to provide lower-cost options for local residents, address the need for affordable housing, and contribute to the overall development and growth of the East End community.*

*Thank you for dedicating your time and consideration to our proposal. We are optimistic about your support and eagerly anticipate a favorable response.*

## **APPLICANT'S RESPONSE TO DOE & NRA**

### **1. UNIQUE BIODIVERSITY**

*We acknowledge the Department of Environment's concerns regarding the impact of our construction on blue iguanas and their habitat. We are committed to preserving the region's biodiversity and minimizing*

*environmental harm, especially to the blue iguanas. Our team will employ responsible construction methods, including phased development, and address the DoE's concerns. Our aim is to offer affordable properties in*

*Cayman while minimally disrupting East End's natural life and habitat. We welcome continued collaboration with authorities for sustainable development.*

## **2. PROPOSED LAYOUT:**



## **3. C/GOVERNMENT DEPARTMENT:**

*Invicta Construction received the following comments from the DoE department for response for the subdivision application of Block 74A 88 and 98:*

- A. National Road Authority** – dated 17th August 2023 See the attached appendix A for reference
- a. “The NRA would like the applicant to provide a comprehensive phasing plan of the project.”

*Invicta Construction reponse:*

*Kindly refer to the phase plan detailed in Section 2. It's crucial to emphasize that our initial approach involve commencing with the underground utilities and road development outlined only in phase 1. We have no intention of clearing or filling the land; other than the road.*

*It's important to clarify that our application pertains solely to the subdivision, and we are not proposing any activities that would compromise the current state of the land.*

- b. “There is only one main access point to the development and the NRA is concerned that there are no other means of entry to the proposed subdivision.

*Applicant should provide at least 2 – 3 other means of entry to surrounding parcels.*

*-Per NRA’s Design and Construction Specifications for Subdivision Roads & Property Development –*

### *1. Section 2.2 Collector Roads*

(a) provide direct access to residences and other property, and (c) provide access to the arterial road system.)

## 2. Section 5.1 - Access Requirements

All subdivisions are required to provide road connections to adjacent property for access or for future extensions.”

*Invicta Construction reponse:*

Following the discussion and approval of the layout via email correspondence with NRA, please note the changes made to obtain NRA’s approval. See the **Blue** highlighted circles indicating the changes made to address the additional access roads.



- c. “For a subdivision with over 150 lots it is required for the applicant to provide a turning lane into the subdivision, which is possible as the owners also own the adjacent property 74A37.”

*See the above **Orange** circle for requested changes.*

- a. “A comprehensive traffic calming plan will be required for a subdivision of this scale, where traffic controls are in place to mitigate speeding and other unwanted behaviours on the road.”

*See the above **Green** circle noting the traffic control changes made.*

- d. **Department of Environment** – Dated 21 August 2023 See the attached appendix B for reference

- a. **Ecological Overview**

i. The application site consists of a mixture of primary dry forest and woodland and primary dry shrubland habitat. These habitats are of high ecological value and provide a biodiverse habitat for native wildlife including Grand Cayman Blue Iguanas (*Cyclura lewisi*). Part of the application site is also located over the East End water lens

#### *Importance of Primary Habitat*

- ii. Primary habitat is mature habitat in its natural state, otherwise uninfluenced by human activity where ecological processes are not significantly disturbed. These habitats are often very old, existing long before humans and may consist of many endemic and ecologically important species.
- iii. Primary habitat is in severe decline and becoming a scarce and highly threatened resource as a result of land conversion for human uses. For this reason, the DoE does not support speculative or wholesale clearing of subdivision sites. In principle, land clearing should be reserved until the development of individual lots is imminent (through the granting of planning permission for development on those particular lots). This allows the opportunity for the individual lot owners to retain as much native vegetation as possible. Native vegetation is best suited for the habitat conditions of the site and requires less maintenance which makes it a very cost-effective choice.

#### *Invicta Construction reponse:*

We fully understand and appreciate the concerns regarding the decline of primary habitat due to land conversion for human uses.

Invicta would like to clarify that our proposal does not involve speculative or wholesale clearing of the subdivision site.

Our intention is solely focused on the **subdivision of the property**, which would then allow new purchasers to apply for their planning and BCU applications independently. This approach ensures that the native vegetation will be retained for a longer duration and align with the principles advocated by the Department of Environment.

- c. **Primary habitat and native vegetation can be retained and used in a variety of ways on a property:**
  - i. It can be retained along parcel boundaries and between buildings to serve as privacy, noise and sound buffers and screening.

#### *Invicta Construction's Response:*

On behalf of Invicta Construction, Heritage Holdings Limited has recommended the following covenants for Breezy Palms (the proposed development name) to the property owners:



*PRE CONSTRUCTION: No clearing of vegetation on the parcel unless Building Construction is approved by Government Authorities. Any cleaning of the lot must be done in accordance with Government Regulations.*

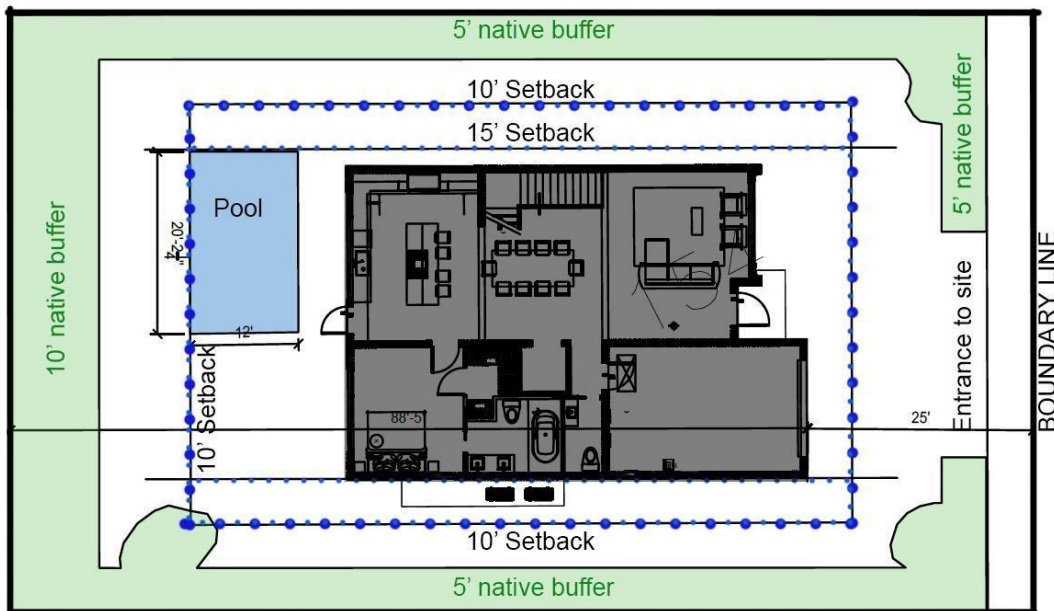
*The prospective buyers/owners will be advised and encouraged to:*

- a. Preserve a 5' native vegetation buffer on the sides and front of the property.*
- b. Preserve a 10' native vegetation buffer at the back of the property.*

*This recommendation equates to an approximate 25% natural vegetation average per property, in addition to the existing 5% overall Land Protection Percentage (LPP) requirement.*

*By preserving the natural habitat the home owner will be able to reduce the up front cost to clear, fill, and eventually pay for landscaping to be planted. We will also point out that their maintenance costs will be lower as the endemic vegetation will require minimal trimming, minimal watering if any and landscape work.*

EXAMPLE OF A SITE  
7,545 sf



*It can be incorporated into the landscaping schemes for low-maintenance low-cost landscaping. Native plants are best suited for the conditions of the site, including the temperature and amount of rainfall. They are climate-appropriate and require less maintenance and irrigation.*

*See the response to section c.i*

- i. It can serve as an amenity, providing green space and shade for those who live nearby or on the property.*



*See the response to section c.i*

- ii. *It can remain as a habitat for endemic wildlife such as anoles, birds and butterflies. This habitat helps to contribute to the conservation of our local species.*

*See the response to section c.i*

- iii. *It can assist with drainage, directly by breaking the momentum of rain, anchoring soil, and taking up water and indirectly by keeping the existing grade and permeable surfaces.*

*See the response to section c.i*

- iv. *It can help reduce carbon emissions by leaving the habitat to act as a carbon sink and allow natural processes to remove carbon dioxide from the atmosphere. Destroying native vegetation releases carbon stored in the plant material, soil and peat.*

*See the response to section c.i*

- v. *When located in an area of wider primary habitat, wildlife corridors can be created connecting areas of a habitat that would have otherwise been isolated through development, allowing for the movement of animals and the continuation of viable populations.*

*See the response to section bii. And c.i*

**b.     *Impacts on Blue Iguanas***

- i. *The subject parcels fall within the natural distribution range of the Blue Iguanas that have been released into the Colliers Wilderness Reserve and their presence has been confirmed on Colliers Wilderness Reserve Rd. and to the south. Blue Iguanas are listed as endangered on the IUCN Red List and they are a Part 1 protected species under the National Conservation Act (2013) making them a species 'protected at all times'.*
- ii. *Blue Iguanas are endemic to Grand Cayman meaning they are unique to Cayman and found nowhere else on Earth. They are an iconic Caymanian flagship species and their presence serves as a valuable tourism asset. Blue Iguanas typically live solitary, territorial lives. As they recover from the brink of extinction, and reproduce and seek to establish territory, the urbanisation of valuable primary habitat continues to be a concern for the future of our wild population that rely on this habitat to forage, shelter and nest.*
- iii. *Heavy machinery can crush or bury iguanas and their nests. It is therefore crucial that **no mechanical clearing, excavation or filling takes place prior to DoE consultation**. Should minor clearing be required, mechanical clearing must not take place during the Blue Iguana nesting season (1 June – 30 September yearly) without DoE consultation. Blue Iguanas can be easily startled and go into retreats where they would remain unseen, putting them at risk.*

*Invicta Construction's Response:*

*We acknowledge the significance of safeguarding the iguanas and, in this regard, direct your attention to our response in Section Bii. Our primary objective revolves around the*

subdivision of the property, empowering new purchasers to independently pursue planning and BCU applications, thereby extending the preservation of native vegetation.

**c. Strategic Overview**

- i. The vast majority of the application site is zoned agriculture/residential with the smaller parcel (74A/98) being zoned low-density residential. However, most of the proposed lots do not meet the minimum lot size even for low-density residential

*Invicta Construction's Response:*

*In response to the zoning concerns raised, we acknowledge that the proposed lots on the application site do not meet the minimum size requirement for low-density residential zoning. To address this, we are in the process of submitting a variance application, seeking to reclassify the lots as 'Medium Density Residential.'*

*This adjustment is driven by our commitment to **providing affordable housing** for Caymanians who currently face challenges in securing property to build homes. We believe that the proposed change will enable us to offer low-cost housing solutions to support the local community. We are actively engaging with the Cayman Islands Government's planning department to discuss and finalize this adjustment and appreciate your understanding in this matter. We will keep you informed of any developments in our discussions with the planning department.*

*There is only 1 subdivision selling lots below \$100k (\$85K) but when you check the elevation the lots are on average 3 ft above MSL. This will require you to fill the property. In order to be of similar height to our lowest lots you will require approximately \$38,500 in fill and equipment to spread it bringing you lot to \$123,500.*

*Although the DoE can appreciate the need for affordable housing, there has not been a demonstrated need for a subdivision of this density in this area. The Government is actively working on an updated Development Plan for the country which is to consider population growth and sustainable development.*

*Without an updated plan, a rezone of this scale is not justifiable. In the absence of an updated Development Plan providing a strategic framework for development, particularly large-scale proposals, the DoE strongly recommends that before determining this planning application, a comprehensive review of the 'need' for the subdivision of more parcels is undertaken. The impact of a further residential subdivision on existing infrastructure and the environment of the island should be properly considered and evaluated. The overall impact on the infrastructure and population of East End should also be considered given there would be significant pressure on the infrastructure and amenities in the area should the subdivision be built out.*

*Invicta Construction's Response:*

*We appreciate the DoE's concerns regarding the proposed development's density and the absence of an updated Development Plan. However, based on our market studies conducted with real estate agents, there is a demonstrated need for affordable housing in*

*the area. While we understand the importance of a strategic development framework, we believe our proposal aligns with identified market demands. We are committed to collaborating with relevant authorities to address infrastructure and environmental impacts and ensure our development plan contributes positively to sustainable growth in the community.*

*We do not support the Central Planning Authority's position of clearing and filling all lots regardless of imminent development when granting permission for a subdivision. Natural habitat and native vegetation can be incorporated into parks, play areas, and amenity spaces to provide multiple benefits to a community, but that opportunity is lost when the area is prematurely cleared. There are subdivisions which were cleared and filled over 30 years ago and have never been developed, resulting in biodiversity loss, proliferation of invasive species and habitat fragmentation with no social or economic benefit to offset it. The site is a total of 52.4 acres of primary habitat. If there is no intention to develop these lots, then there is no social benefit or improved living environment for the people of East End to set against the environmental harm from habitat fragmentation and loss, as well as the resource implications that result from the construction of roads and development of infrastructure for the subdivision.*

*Invicta Construction reponse:*

*Kindly refer to Section Bii for our comprehensive response to the concerns about biodiversity loss. While we fully understand and appreciate these concerns, it is crucial to emphasize that our primary focus is on the subdivision of the property. This approach empowers new purchasers to independently pursue planning, BCU and land clearing applications, ensuring the retention of native vegetation for a more extended period. If the properties are not developed, the existing biodiversity will remain preserved.*

***d. There are environmental consequences from the continued approval of large-scale subdivisions similar to this. These include:***

- i. The construction of the roads creates a direct loss of habitat by clearing and filling.*
- ii. The presence of the roads creates habitat fragmentation, which is a key driver of biodiversity loss because it makes natural areas smaller and more isolated from each other.*
- iii. The road provides easier access for invasive species such as rats, cats and dogs.*
- iv. There are 'edge effects' where the area directly next to the road is degraded by the presence of the roads. There are barriers to moving between fragments of habitat, changes to the community composition, and changes to aspects such as climate, sunlight, nutrients, and microclimate.*
- v. The development of the resultant lots increases the above effects and increases the direct loss of habitat, habitat fragmentation, presence of invasive species, and impacts on surrounding areas.*

vi. *Issues with resource use with partially-developed, sprawled subdivisions serving only a small number of people.*

*Invicta Construction Response:*

*We appreciate your detailed concerns about the impact of road construction on habitat and biodiversity. It's important to note that the road area constitutes only 14% of the total property area and will be executed in four distinct phases, as illustrated in section 3.A. This phased approach ensures that the impact on natural habitat is minimized, allowing for the retention of the existing natural environment for an extended duration.*

*DoE Recommended Conditions*

*For reasons highlighted throughout this review, the DoE **does not** support the approval of this application. Should the Central Planning Authority or Planning Department be minded granting planning permission for the proposed subdivision, the DoE recommends the inclusion of the following conditions in the Planning approval to minimize impacts on Part 1 Protected Species and this important primary habitat.*

- 1. There shall be no land clearing, excavation, filling, or development of the resultant parcels without planning permission for such works being granted.*
- 2. Any future development, clearing, filling or excavation of the resultant subdivided parcels shall be the subject of a separate consultation with the National Conservation Council.*

*Invicta response:*

*Thank you for your comprehensive review and the outlined conditions to minimize impacts on Protected Species and primary habitat. We have carefully considered your recommendations, and we wish to express our commitment to environmental conservation.*

*In light of your concerns and conditions, we acknowledge the importance of responsible development practices. We fully agree to the suggested conditions, namely:*

*We hope that, with these agreed-upon conditions, the Department of Environment will reconsider and grant approval for the proposed subdivision.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The subject property is located in East End, on the west side of Austin Conolly Drive.

The property is currently vacant and the proposal is to create 180 new residential lots, three parcels (94,990 square feet) as Lands for Public Purposes, and one road parcel.

Proposed residential lot sizes range from 7,195 sq. ft. to 38,640 sq. ft.

### **Zoning**

The property is zoned Low Density Residential and Agricultural/Residential.

### **Specific Issues**

#### **1) Concerns of the Objector & Water Lens Lots**

It appears that the northern portion of the subject parcel is located within the East End Water Lens. In this regard, Section 21 of the Regulations state the following:

“Two houses per acre may be built on agricultural/residential land but if the Authority is satisfied that any such land is not situated over a water lens and is not particularly suited to agriculture, it may permit any development which complies with the requirements for low density residential areas.”

The Department is of the opinion that proposed lots 23 and 24 as well as 89 to 92 are situated over a water lens and should not be permitted to comply with the Low Density Residential requirements.

#### **2) Lot Width**

The vast majority of the proposed lots have a minimum width of 66.5 feet, with a few lots as low as 44 feet.

Regulation 9(8)(g) from the Low Density Residential zone requires a minimum lot width of 80 feet.

The applicant has submitted a variance letter and the Authority should consider if a variance is warranted in this instance.

#### **3) Lot Area**

Regulation 9(8)(d) requires a minimum lot size of 10,000 square feet for houses.

The majority of lots are less than 10,000 square feet in area.

The applicant has submitted a variance letter and the Authority should consider if a variance is warranted in this instance.

#### **4) Road Connection to Adjacent Lands**

Should the Authority be mindful to grant planning permission, the Department would recommend future road link blocks to lands located adjacent to the proposed subdivision. This is especially important since there is only one proposed access point for the entire 180 residential lots that are proposed. This would also help ensure access during emergencies as well as good traffic patterns should the abutting lands develop with residential uses in the future.

#### **5) NRA Comments**

The NRA has submitted negative comments regarding this proposal. The Authority should discuss the concerns of the NRA.

#### **6) Lots 174 to 179 not perpendicular to the road**



The Planning Department has experienced that there is potential for future land use conflicts between neighbours when proposed lot lines are not perpendicular to the adjacent roadway.

The Authority should discuss if the proposed subdivision design is acceptable in this instance.

### **SUPPLEMENTARY ANALYSIS**

Since the time of original CPA consideration, the applicant has modified the application in the following manner:

- traffic calming plan
- phasing plan
- left turn taper
- entrance roundabout located on the applicant's land

## **2.3 CAROLYN CHALONER (Johnson Design + Architecture) Block 4E Parcel 52 (P23-0690) (\$2,300,000) (EJ)**

Application for a preschool.

**Appearance at 1:00 pm**

### **FACTS**

<i>Location</i>	Birch Tree Hill Road, West Bay.
<i>Zoning</i>	<b>HDR</b>
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.80 ac. (34,848 sq. ft.)
<i>Parcel size required</i>	20,000 sq. ft.
<i>Current use</i>	House
<i>Proposed building size</i>	13,558.89 sq. ft. inclusive of covered walkways 7,890 sq ft without covered walkways
<i>Total building site coverage</i>	38.91%
<i>Required parking</i>	see below
<i>Proposed parking</i>	20

### **BACKGROUND**

Existing house prior to 1958.

December 6, 2023 (CPA29/23; item 2.4 - It was resolved to adjourn the application and invite the applicant to appear before the Authority to discuss concerns regarding:

- 1) Suitability
- 2) Side setbacks
- 3) Parking
- 4) Lack of security fencing

**Recommendation:** Discuss the application, **for the following reasons:**

- 1) Suitability
- 2) Setback Variances (4'.10" & 6'.6" vs 10'),
- 3) Insufficient Parking Space (20 vs 47),
- 4) Lack of Security (fencing).

### **AGENCY COMMENTS**

Comments from the Water Authority, National Roads Authority, Department of Environmental Health, Department of Environment, Fire Department and Early Childhood Care & Educational Unit are noted below.

#### **Water Authority**

*Please be advised that the Water Authority's requirements for this development are as follows:*

#### **Wastewater Treatment & Disposal**

- *The developer shall provide a **septic tank(s)** with a capacity of at least (2,500) US gallons for the proposed, based on the following calculations: 15gpd per person (100 children & 18 staff) (1,770 GPD)*
- *The septic tank shall be constructed in strict accordance with the Authority's standards. Each compartment shall have a manhole to allow for inspection and service. Manholes shall extend to or above grade and be fitted with covers that provide a water-tight seal and that can be opened and closed by one person with standard tools. Where septic tanks are located in traffic areas, specifications for a traffic-rated tank and covers are required.*
- *Treated effluent from the septic tank shall discharge to an effluent disposal well constructed by a licensed driller in strict accordance with the Authority's standards. The minimum well casing diameter for this development shall be 4". Licensed drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.*
- *To achieve gravity flow, treated effluent from the septic tank shall enter the disposal well at a minimum invert level of 4'6" above MSL. The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well,*

*which fluctuates with tides and perching of non-saline effluent over saline groundwater.*

***For Water Authority approval at BCU stage, a detailed profile drawing of the proposed wastewater treatment system is required. The drawing shall indicate:***

- 1. If the proposed septic tank will be site-built or precast. (You may use the Water Authority drawing for site-built tanks available from the Authorities website or a Precast septic tank drawing if you intend to use a Precast Tank). Site Built Tanks shall be coated with Epoxytec CPP or ANSI/NSF-61 certified equivalent.*
- 2. All dimensions and materials shall be provided for any site-built tanks.*
- 3. Manhole extensions are permitted up to a maximum of 24" below finished grade.*
- 4. Detailed specifications including make and model for (H-20) traffic-rated covers for septic tanks proposed to be located within traffic areas.*
- 5. A detailed profile cross-section of the wastewater system clearly showing the plumbing from building stub out to the effluent disposal well achieving the minimum invert connection specified above. (Alternatively details of proposed lift station shall be required)*
- 6. The Water Authorities updated 2020 effluent disposal well specifications.*
- 7. A 30ft horizontal separation between the effluent disposal well and any stormwater drainage wells.*

### **Water Supply**

*Please be advised that the proposed development site is located within the Cayman Water Company's (CWC) piped water supply area.*

- The developer is required to notify the Cayman Water Company without delay, to be advised of the site-specific requirements for connection.*
- The developer shall provide water supply infrastructure per CWC's specification and under CWC's supervision.*

### **National Roads Authority**

*As per your memo dated November 1<sup>st</sup>, 2023 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

*The NRA has no objections or concerns regarding the above revised proposed preschool as the client has satisfied changing the entrance/exit to 24', one-way driveway aisle to 12', and widening the sidewalk to NRA's specifications of 6ft.*

*However, all other conditions still apply as reference in memorandum dated October 17<sup>th</sup>, 2023.*

*As per your memo dated October 11<sup>th</sup>, 2023 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

### *General Issue*

- *Entrance and exit curves shall have no less than fifteen (15) feet radius curves, and have a width of twenty-two (22) ft.*
- *Tire stops (if used) shall be placed in parking spaces such that the length of the parking space is not reduced below the sixteen (16) feet minimum.*
- *A six (6) foot sidewalk shall be constructed on Birch Tree Hill Road, within the property boundary, to NRA standards.*
- *As per the Design and Construction Specifications for Subdivision Roads & Property Development*
  - o *7.1 Driveways may be no closer to the corner of intersecting rights of way than 60% of parcel frontage or one-hundred (100') whichever is less. Driveways may be no closer to each other than fifty (50') and, shall not align with driveways on the opposite side. A separation of one-hundred and twenty feet (120') is desirable.*

### *Road Capacity Issues*

*The traffic demand to be generated by a 7,890 sq. ft. Pre-School has been assessed in accordance with ITE Code 565 - Daycare. Thus, the assumed average trip rates per student provided by ITE for estimating the daily, AM and PM peak hour trips are 4.38, 0.80 and 0.81 respectively. The anticipated traffic to be added onto Birch Tree Hill Road is as follows:*

<b>Expected Daily Trip</b>	<b>AM Peak Hour Total Traffic</b>	<b>AM Peak 53% In</b>	<b>AM Peak 47% Out</b>	<b>PM Peak Hour Total Traffic</b>	<b>PM Peak 47% In</b>	<b>PM Peak 53% Out</b>
473	86	46	41	87	41	46

*Based on these estimates, the impact of the proposed development onto Birch Tree Hill Road is considered to be minimal.*

### *Access and Traffic Management Issues*

*One-way driveway aisles with diagonal parking shall be a minimum of twenty (20) ft wide. Two-way driveway aisles shall be a minimum of twenty-two (22) ft. wide.*

### *Stormwater Management Issues*

*The applicant is encouraged to implement state-of-the-art techniques that manage stormwater runoff within the subject parcel and retain existing drainage characteristics of the site as much as is feasible through innovative design and the use of alternative*

construction techniques. However, it is critical that the development be designed so that post-development stormwater runoff is no worse than pre-development runoff. To that effect, the following requirements should be observed:

- *The applicant shall demonstrate, prior to the issuance of any Building Permits, that the Stormwater Management system is designed to embrace storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and ensure that surrounding properties and/or nearby roads are not subject to stormwater runoff from the subject site.*
- *The stormwater management plan shall include spot levels (existing and finished levels) with details of the overall runoff scheme. Please have the applicant provide this information prior to the issuance of a building permit.*
- *Construct a gentle ‘hump’ at the entrance/exit (along the entire width of each driveway) in order to prevent stormwater runoff from and onto Birch Tree Hill Road. Suggested dimension of the ‘hump’ would be a width of 6 feet and a height of 2-4 inches. Trench drains often are not desirable.*
- *Curbing is required for the parking areas to control stormwater runoff.*
- *Roof water runoff should not drain freely over the parking area or onto the surrounding property. Note that unconnected downspouts are not acceptable. We recommend piped connection to catch basins or alternative stormwater detention devices. Catch basins are to be networked, please have the applicant provide locations of such wells along with details of depth and diameter prior to the issuance of any Building Permits.*
- *Sidewalk detail needs to be provided as per NRA specifications. See ([https://www.caymanroads.com/upload/files/3/Sidewalk%20&%20Curbing%20Details.p df](https://www.caymanroads.com/upload/files/3/Sidewalk%20&%20Curbing%20Details.pdf))*

*At the inspection stage for obtaining a Certificate of Occupancy, the applicant shall demonstrate that the installed system will perform to the standard given. The National Roads Authority wishes to bring to the attention of the Planning Department that non-compliance with the above-noted stormwater requirements would cause a road encroachment under Section 16 (g) of The Roads Act (2005 Revision). For the purpose of this Act, Section 16(g) defines encroachment on a road as*

*"any artificial canal, conduit, pipe or raised structure from which any water or other liquid escapes on to any road which would not but for the existence of such canal, conduit, pipe or raised structure have done so, whether or not such canal, conduit, pipe or raised structure adjoins the said road;"*

*Failure in meeting these requirements will require immediate remedial measures from the applicant.*

### **Department of Environment (October 13, 2023)**

*This review is provided by the Director of the Department of Environment under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*



*As seen in Figure 1 below, the application site is man-modified and consists of regrowth from the 2000s. Old regrowth can still be ecologically valuable as it may contain endemic and ecologically valuable species.*



*Figure 1. The application site with the parcel boundary highlighted in red (Aerial Imagery Source: UKHO, 2021).*

*The applicant should retain as much native vegetation as possible and incorporate it into the landscaping scheme. Native species are best suited for the conditions of the site, including the temperature and amount of rainfall. They are climate-appropriate and require less maintenance and irrigation. Landscaping with native vegetation also provides habitat and food for native fauna such as birds and butterflies, promoting biodiversity and providing valuable ecosystem services.*

*The DoE encourages the applicant to use any cleared vegetation as mulch for the garden features indicated in the submitted plans. Organic mulch adds nutrients from the cleared vegetation into the soil and increases soil fertility. This is a more sustainable way of disposing of cleared vegetation as opposed to adding to the vegetative waste in Cayman's landfills.*

*The DoE notes that the applicant intends to use concrete for the proposed driveway and parking. We encourage the applicant to use a more permeable material to help with on-site drainage and reduce the likelihood of surface water flooding.*

*Best management practices should be adhered to during construction to reduce impacts on the environment. In particular control measures should be put in place to address pollution from expanded polystyrene (EPS) beads on construction sites, for example those used in insulating concrete forms (ICF). Polystyrene is not biodegradable, and the EPS beads can be consumed by wildlife when it enters the food chain. These beads are very difficult to remove once they enter the environment and they do not naturally break down.*

*If the Central Planning Authority or Planning Department is minded to grant planning permission for the proposed development, we recommend the inclusion of the following conditions in the approval:*

- 1. If the construction uses insulating concrete forms (ICFs) or other polystyrene materials, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas or pollute the environment.*

### **Fire Department**

*As per discussion, please place a Fire Well in place of the Fire Hydrant*

### **Early Childhood Care & Educational Unit**

*The following information was requested via email. We are satisfied with the responses provided. 1. For classroom 1, can you let us know about visibility from the inside? We note there are windows looking in from the outside, but what about from the inside (the admin area/storage seems to block off the options for windows)? Will there be cameras and/or a mirror so that when looking in from the window panel on the door the entire space can be seen? All doors from the outside to the inside of classrooms will have a glass panel in them for visibility into each classroom, including the doors on both sides of classroom*

- 1. We will also have CCTV in each classroom and on all corridors and outside play areas.*
- 2. Let us know what the plans are for a sick bay? We will have a cot in the Head's office for any sick children that are waiting for parents to pick them up. This is so they can be supervised while they wait for a parent.*
- 3. Remember visibility into bathrooms (e.g. half doors/window panels). All doors into the bathrooms will have window panels on them so you can see into the bathrooms and the stalls will have half doors on them (provided you/we can convince environmental health that this is OK and not contrary to the building code).*
- 4. Can you help us understand how access to the institution will be controlled – are the fences all the way around the building? There will be a fence and hedge around the whole property and there will be a 6-foot gate at either side of the porch at the front of the school to control access to the routes to the classrooms and the garden. These gates will have keypad locks on them so only staff can access and a member of staff will be*

*on the gate for drop offs. The front door will be locked with a doorbell entry system controlled by the receptionist.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The proposed 13,558.89 sq. ft. Pre-School is located near to the West Bay sport stadium on Birch Tree Hill Road in West Bay.

### **Zoning**

The property is zoned High Density Residential.

### **Specific Issues**

#### **1) Suitability and Permitted Uses –**

The proposed six-classroom, cover area, multipurpose room and admin office will cater to 108 students and 18 staff members; the proposed is a single storey multiple building connect via covered walkways; the Authority is asked to consider if the proposed is suitable for this high-density-residential zone under regulations 9(3).

#### **2) Side Setbacks Variance –**

If the Authority determines that the proposed preschool is in a suitable location, the applicant is also seeking permission for side setback variances, proposed at (4'.10" & 6'.6" vs 10') respectively, not meeting regulations 9 (6)(i) 10' side for single storey.

#### **3) Insufficient Parking Spaces –**

The proposed plan calls for 20 parking spaces, however, the department calculations requires 47 spaces; therefore, the Authority is asked to weight in on the number of proposed vs required spaces.

#### **4) Lack of Security (fencing) –**

As proposed, the plan does not show any wall or fencing or security feature to prevent or stop a child from wondering into the parking lot onto Birch Tree Hill Road.

#### **5) Deficient Amenities –**

Whilst, there is no regulations that requires a kitchen and preparatory area for handling of food for students and no dedicated area to isolate a sick child (sickbay), should the Authority require such facilities giving the number of students proposed for this school.

## **SUPPLEMENTARY ANALYSIS**

There have been no changes to the plans.

## **2.4 ELBERT EUGENE CONNOR (Roland Bodden & Company) Block 66A Parcel 10 (P23-0617) (\$7,000) (NP)**

Application for a 2 lot subdivision.

**Appearance at 1:30 p.m.**

## **FACTS**

<i>Location</i>	Northern terminus of Junges Road, East End
<i>Zoning</i>	Agricultural/Residential
<i>Notification Results</i>	No objectors
<i>Parcel size</i>	10.0 acres
<i>Parcel size required</i>	10,000 sq. ft. for dwellings 25,000 sq. ft. townhouses & apartments
<i>Parcel width required</i>	80 feet for dwellings 100 feet for townhouses & apartments
<i>Proposed lot sizes</i>	9.81 acres & 8,276.4 sq ft
<i>Current use</i>	Vacant

## **BACKGROUND**

October 11, 2023 (**CPA/24/23: Item 2.9**) – The Authority resolved to adjourn the application and invite the applicant to address the Authority regarding potential adverse effects of the proposal, as defined in Section 2 (a-l) of the NCA.

The Authority would also like to discuss with the applicant concerns regarding the proposed access scenario.

**Recommendation:** Discuss planning permission for the following reasons:

- 1) Size of Lot 2 (8,276.4 sq ft vs 10,000 sq ft)
- 2) Applicant's NCA 2(a-l) input

## **AGENCY COMMENTS**

Comments from the DOE are provided below.

### **Department of Environment (August 7, 2023)**

*This review is provided by the Director of the Department of Environment under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*

*The application site consists of man-modified and primary habitat. Man-modified vegetation is of limited ecological value. Primary habitat is mature habitat in its natural state, otherwise uninfluenced by human activity where ecological processes are not significantly disturbed. These habitats are often very old, existing long before humans and may consist of many endemic and ecologically important species. Primary habitat is in severe decline and becoming a scarce and highly threatened resource as a result of land conversion for human activities. Primary habitat was noted in the northern half of the site*

*and consisted of seasonally flooded/semi-deciduous forest, seasonally flooded mangrove forest and woodland, and seasonally flooded grassland.*

*The property is adjacent to the south of the Salina Reserve, a protected area under the National Trust Act.*

*We note that the application is for a subdivision, we would **not** support the clearing of this site at this time, especially the area of primary habitat to the north of the site which is adjacent to the Salina Reserve. Land clearing should be reserved until the development of individual lots is imminent (through the granting of planning permission for development on those particular lots). This allows the opportunity for the individual lot owners to retain as much native vegetation as possible. Clearing the entire site prematurely removes the choice from the individual lot owners and removes the value the habitat could provide in the time between the preparation of a subdivision and the development of an individual lot.*

*Primary habitat and native vegetation can be retained and used in a variety of ways on a property:*

- It can be retained along parcel boundaries and between buildings to serve as privacy, noise and sound buffers and screening.*
- It can be incorporated into the landscaping schemes for low-maintenance low-cost landscaping. Native plants are best suited for the conditions of the site, including the temperature and amount of rainfall. They are climate-appropriate and require less maintenance and irrigation.*
- It can serve as an amenity, providing green space and shade for those who live nearby or on the property.*
- It can remain as a habitat for endemic wildlife such as anoles, birds and butterflies. This habitat helps to contribute to the conservation of our local species.*
- It can assist with drainage, directly through breaking the momentum of rain, anchoring soil, and taking up of water and indirectly through keeping the existing grade and permeable surfaces.*
- It can help reduce carbon emissions by leaving the habitat to act as a carbon sink and allow natural processes to remove carbon dioxide from the atmosphere. Destroying native vegetation releases carbon stored in the plant material, soil and peat.*
- When located in an area of wider primary habitat, wildlife corridors can be created connecting areas of a habitat that would have otherwise been isolated through development, allowing for the movement of animals and the continuation of viable populations.*

*If the Central Planning Authority or Planning Department is minded to grant planning permission for the proposed subdivision, the DoE recommends the inclusion of the following condition in any planning permission to minimise impacts to this valuable habitat:*

- 1. There shall be no land clearing, excavation, filling or development of the resultant parcels without planning permission for such works being granted.*



## **National Roads Authority**

*The applicant has acknowledged the Boundary Plan 515, gazetted in May 2009 and published in Gazette no. 33 of 2009. Therefore the said plan has no concern to the NRA.*

## **APPLICANT'S LETTER**

*On behalf of our client, Mr. Elbert Eugene Connor, we are kindly requesting a variation on the minimum lot size for Lot 2 of the proposed subdivision application, as it relates to Planning Regulation 8(13).*

*This was the best suitable design for the proposed lot due to the edge of the proposed road that traverses through the subject block and parcel. We are kindly requesting a favorable review into this proposal.*

*Your approval for the variation would be greatly appreciated*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The subject property is located at the northern terminus of Junges Road in East End.

The property is currently vacant and the proposal is to create two new lots, Lot A to the north with 9.81 acres of area and Lot 2 to the south with 8,276.4 square feet of area.

### **Zoning**

The property is zoned Agricultural/Residential.

### **Specific Issues**

#### **1) Size of Lot 2 (8,276.4 vs 10,000)**

The subject property contains a proposed road that is planned by the NRA in the future. The proposed location of the road would create Lot 1 and Lot 2 and proposed lot 2 would have an area of 8,276.4 square feet.

The Authority should discuss whether a variance for lot size is warranted in this instance.

## **SUPPLEMENTARY ANALYSIS**

There have been no changes to the plans.

## **2.5 BON CREPE LTD. (Abernethy & Associates) Block 66A Parcel 20 & Block 69A Parcel 51 (P23-0679) (\$150,000) (NP)**

Application for land clearing, after the fact land clearing & road construction

**Appearance at 2:00 p.m.**

## **FACTS**

<i>Location</i>	Sunnyfield Road, North Side
<i>Zoning</i>	<b>Agricultural/Residential</b>
<i>Notification Results</i>	One Objection
<i>Parcel size</i>	199 acres
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Road & Gate
<i>Proposed use</i>	None at this time

**Recommendation:** Discuss the application for the following reasons:

- 1) the after the fact application to clear land by mechanical means and the construction of a road
- 2) the request to clear a further 662.6 linear feet to facilitate the extension of the after the fact road

## **AGENCY COMMENTS**

Comments from the DOE are noted below.

### **Department of Environment (September 29, 2023)**

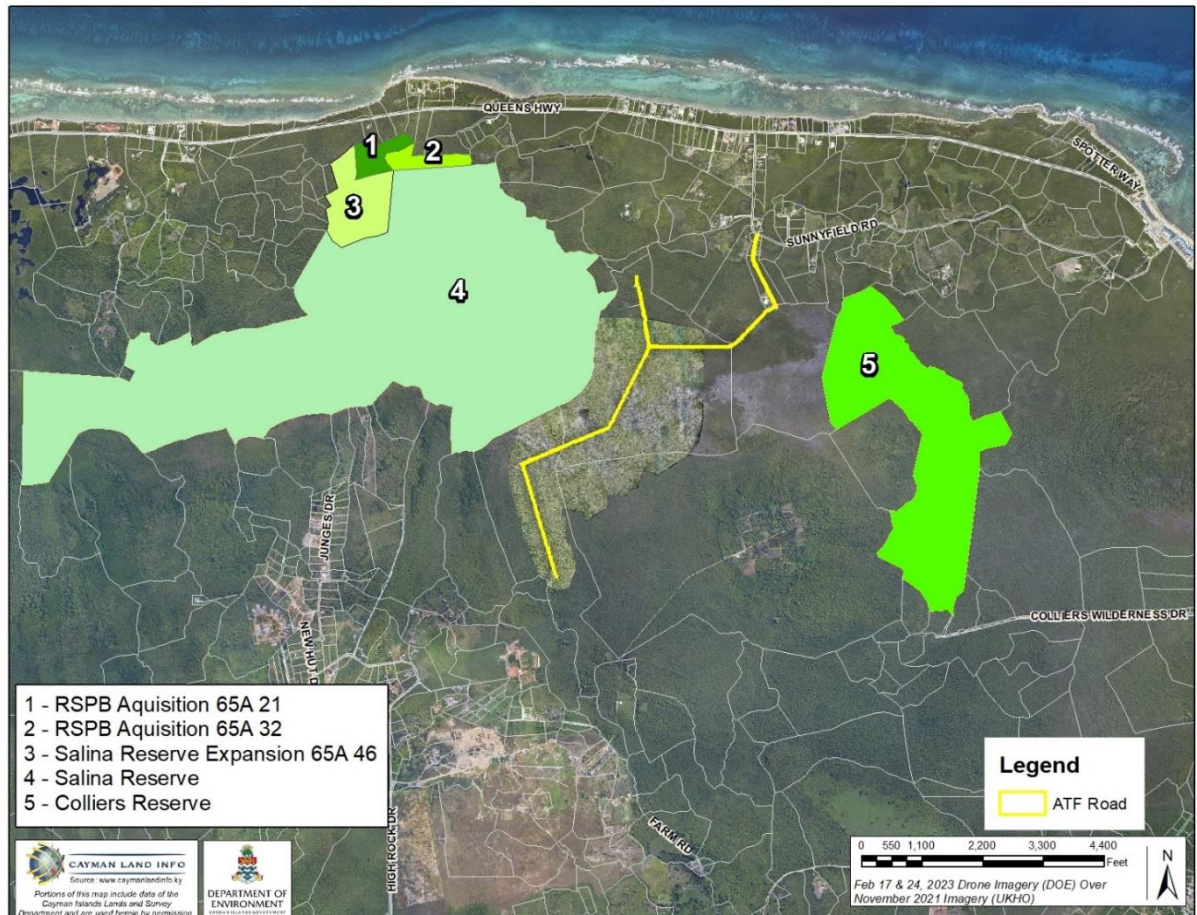
*This review is provided by the Director of the Department of Environment (DoE) under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*

*The application is for an after-the-fact 2.03 mile road with a proposed additional 0.13 mile extension. This after-the-fact road is exceptionally environmentally damaging, having destroyed multiple protected species and having the potential to continually adversely affect the wild Blue Iguana population in perpetuity.*

*The site is situated within an extremely environmentally sensitive area. It is located between two protected areas, the Salina Reserve and Colliers Wilderness Reserve, both sites protected under the National Trust Act. This area has long been identified both nationally and internationally for its conservation value:*

- *The nearby parcel, Block 65A Parcel 21, was purchased by the Royal Society for the Protection of Birds (RSPB) in 2019, as their first investment in land in a UK Overseas Territory, and is leased to the National Trust for their protection.*
- *The RSPB has purchased a second parcel, Block 65A Parcel 32, as a second investment contiguous with the Salina Reserve with the land transfer still in progress.*
- *In 2022, the government purchased Block 65A Parcel 46 for protection under the National Conservation Act as part of a further expansion of the Salina Reserve.*

- *The Salina Reserve is an internationally recognised Important Bird Area by Birdlife International.*
- *The Salina Reserve and Colliers Wilderness Reserve are the main release sites for captive-bred Blue Iguanas, which has been funded by millions of dollars of donations from individuals, organisations and corporate sponsors over time.*



*Figure 1. Protected areas in the vicinity of the after-the-fact Road (Source: DoE, 2023).*

*The level of investment by the Crown, by the National Trust of the Cayman Islands, by RSPB and by the public all indicate just how important this area is for preservation and conservation.*

### **Inaccuracies in the Applicant's After-the-Fact Application**

*The application contains a number of inaccuracies and it would be remiss of the Central Planning Authority to approve the after-the-fact application without correcting these inaccuracies. These inaccuracies result in a narrative which minimises the impact of the road.*

- 1. The land clearing is far more extensive than presented in the survey drawings. It appears that the surveyor has assumed a 12 ft width across the length of the route.*

*However, it is much wider than that. It has an average width of about 24 ft and there are numerous cut-outs of 60 ft wide or more (see Figures 2 to 4).*

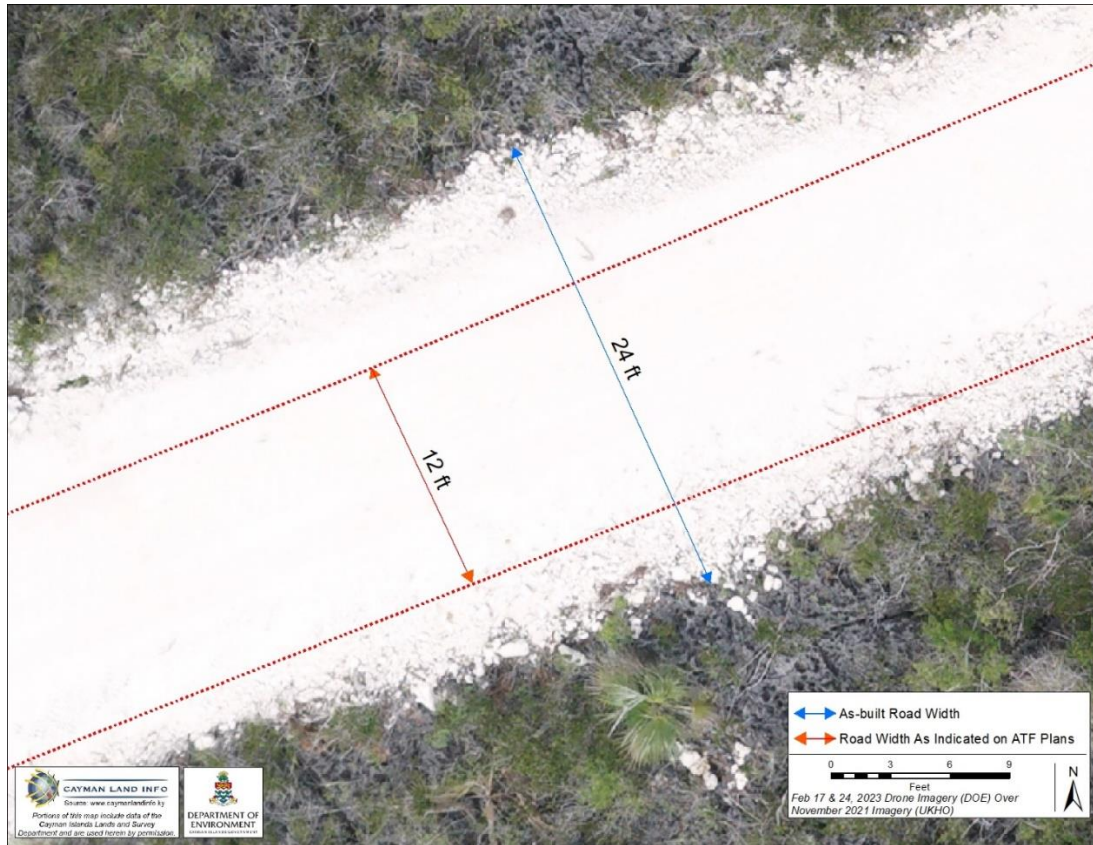
- 2. The area calculations are incorrect given that they do not reflect the actual road area nor the total area cleared by the Applicant (see Table 1). For the road within Block 69A Parcel 50, the actual as-built road area is almost twice as large as the area applied-for, and the cleared area to accommodate the road is over three times as large. For the road within Block 69A Parcel 20 and Parcel 51, the road is also almost twice as large as the area applied-for, and the cleared area is approximately 2.5 times the area applied for.*
- 3. The 'Typical Cross Section of Road' is not accurate as it presents the road as being 12 feet wide. It is substantially more than 12 feet wide. If this Typical Cross Section of Road is intended to only reflect the proposed extension of the road, then the title is misleading. It should read 'Typical Cross Section of Proposed Road Extension' rather than referring to the road in totality. The Planning Department should also consider whether an accurate 'Typical Cross Section of the After-the-Fact Road' is needed, to reflect that the existing road is actually approximately 24 feet wide on average.*
- 4. The application letter from Greg Abernethy states, "from Parcel 69A 50 the road is 12' rough shot rock." As detailed above, this is not an accurate description of the road width.*
- 5. The application letter from Greg Abernethy also states, "Due to the rough construction of the road, vehicles will only be able to travel at low speeds (15 MPH or slower)." The road is constructed of well-compacted fill and it is certainly possible to travel at speeds greater than 15 MPH on this road as there are no hindrances and it is long and straight. Evidence of speeds sufficiently high to kill wildlife are shown in Figure 5.*
- 6. The letter from the Applicant states that the roads are narrow and 12 feet wide and that they constitute 'trails'. However, as evidenced below, this is not correct.*
- 7. 'We have tried to ensure the trails are only created over the cliff rock and affected the fewest trees possible' is not credible, as the roads are straight, extremely extensive, through the centre of all the parcels, and 2.03 miles long. We believe that roads designed to function as 'trails' would want to keep shade cover, minimise the amount of fill and disturbance, and meander through an area.*
- 8. Lastly, any commentary around the development and construction of a road and associated use as farming as 'offering any blue iguanas in the area a sanctuary' is entirely without merit. Blue iguanas benefit from the preservation of their native habitat and they do not benefit by the construction of a road, creating conflict with road traffic and invasive species.*





*Figure 2. The survey drawing of the extent of the after-the-fact road is shown as red. However, the width of the road is wider than depicted (see the areas of white fill exposed on either side of the red dashed line) and the area impacted by clearing (blue) is even larger based on our drone imagery (Source: DoE, 2023).*





*Figure 3. The road width as indicated on the surveyor drawing (red) is much smaller than the as-built road width (blue) for which the applicant is seeking after-the-fact permission (Source: DoE, 2023).*



*Figure 4. Numerous large areas of clearing and filling are outside of the boundary of the after-the-fact plans submitted with the planning application (red), as evidenced by the visible white fill and brown areas of dead vegetation outside of the red dashed line (Source: DOE, 2023).*

*Table 1. Our calculations of the area filled to make the road, and the total area cleared and impacted by the road construction.*

<b><i>Section Of Road</i></b>	<b><i>Area Applied for In ATF Planning Application (SF)</i></b>	<b><i>As-Built Road Area Measured from DoE Drone Imagery (SF)</i></b>	<b><i>As-Built Road Area as a Percentage of Application</i></b>	<b><i>Cleared Area Measured from DoE Drone Imagery (SF)</i></b>	<b><i>Cleared Area as a percentage of Application</i></b>
69A/50	12,945.60	25798	199.28%	39248	303.18%
66A/20 and 69A/51	99,582.00	197695.825	198.53%	254873.907	255.94%

*NB: The area calculations as part of the as-built after-the-fact application appear to assume a road width of 12 ft. The method used by the applicant to calculate the area of the road access across Block 69A Parcel 29, 30, and 31 is unclear and we have not been able to replicate the results.*





*Figure 5. A crushed snake on the after-the-fact road noted during our execution of a warrant indicating that speeds sufficient to kill wildlife are certainly possible on this road (Source: DoE, 2023).*

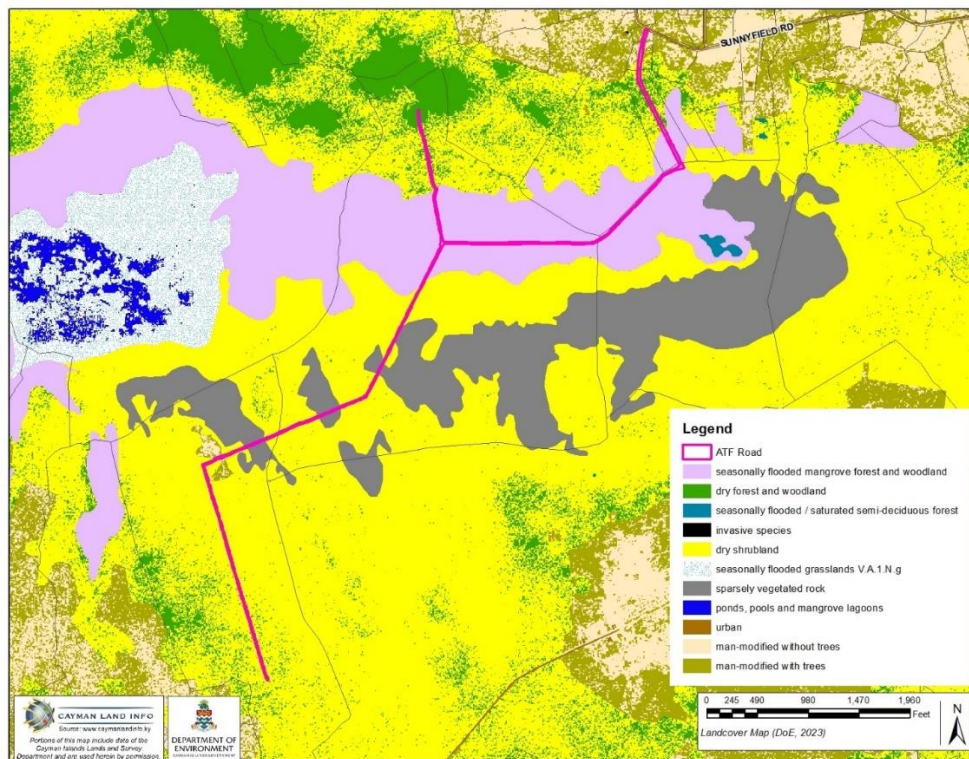
*The Planning Department should ensure that the After-the-Fact Application reflects the accurate extent of the road.*

### ***Intentions of the Applicant***

*While we would like to have confidence that there would be no more clearing of ecologically-valuable primary habitat in this area, it is very difficult for us to believe that the true intention of this road is for 'farming and hiking', as the extent of the road does not seem proportionate or logical for this use.*

- If the true intention was to reach the southern end of the parcels, where there is arable farming land, land access would have been sought from the south where there is a 6 ft Right of Way from Farm Road. A 6 ft Right of Way would be sufficient for the purposes stated of trails, hiking, and small-scale subsistence farming. A 24 ft wide and 2.03 mile long road from the north seems rather intensive for those purposes. However, a 6 ft Right-of-Way would not be suitable for development purposes, whereas a 24 or 30 ft road would be required for development.*

- *The vast majority of the site is unsuitable for agriculture, and it does not seem logical to construct such a major road through areas of mangrove forest and rocky karst landscape for ‘agricultural purposes’ when these areas do not have the conditions suitable for agriculture (see Figure 6 and 7).*
- *The Applicant has appealed the Interim Directive for Blue Iguanas to Cabinet. If the true intention was as stated, and the Applicant intended to foster a positive balance with the Blue Iguanas, the provisions in the Interim Directive would not cause concern as they are in accordance with the stated purpose.*
- *It is extremely difficult to rationalise the Applicant’s stated objective of ‘to learn more about Cayman’s native flora and fauna and intend to protect both alike,’ when the action observed has been to unlawfully construct a major 2.03 mile road through native, ecologically sensitive habitat, destroy 7 acres of habitat directly, plus clear more habitat (as-yet unquantified, but the parcels have an approximately area of 300 acres) through farming this ecologically sensitive area.*



*Figure 6. Landcover map showing the habitat at the site (Source: DoE Landcover, 2013). The road primarily proceeded through areas of mangrove forest and areas of sparsely vegetated rock – both unsuitable for agriculture.*





*Figure 7. A large part of the site is occupied by rocky karst which is unsuitable for agriculture.*

*We urge caution in accepting the proposed rationale for the road and the inaccuracies and language used to minimise the impact and scale of the road.*

### **History of the After-the-Fact Planning Application**

*In 2019, the Department of Environment was first alerted by a member of the public that there was unlawful clearing on Sunnyfield Drive. We alerted the Planning Department at that time, who stated that, “It has always been accepted as long as I’ve been here that if someone legally benefits from a vehicular right-of-way, they can clear the land in order to physically use the right-of-way.”*

*Given the potential negative environmental implications of allowing extensive construction along Registered Rights of Way without planning permission or any form of environmental oversight, the DoE sought guidance from the Attorney General’s chambers on whether the Development and Planning Act allowed such an exclusion. The legal opinion we received from the Attorney General’s Chambers, which we shared with Director of Planning in December 2019 (see attached), concluded that the road construction works constituted development under the Development and Planning Law (irrespective of the works being carried out on the right of way) and therefore required planning permission. Our understanding is that no enforcement action was taken by the Planning Department.*





*Figure 8. The construction of the after-the-fact road in 2019 (Source: DoE, 2019).*

*In early 2020, the road construction recommenced and was now well beyond the limit of any Right of Way. We were advised that a Department of Planning compliance officer would investigate. To our knowledge, no enforcement action was taken.*

*In 2020, the Mangrove Conservation Plan was adopted and gazetted by the NCC, outlining the parameters under which mangroves can be taken.*

*In May 2022, the DoE again reached out to the Planning Department as our Conservation Officers noted that works had started up again. We also asked for an update on the outcome of their investigation on the construction of the road which was initially brought to their attention in 2019 as we had not received any update on either of our inquiries.*

*In December 2023, a DoE staff member noted from an airplane that the road construction was now exceptionally long, and much further south than the latest position in 2022. This road moving south now divided the two protected areas. In February 2023, we collected drone imagery which showed the road being actively worked on. The DoE determined next steps as follows:*

- a) *collect additional drone imagery to accurately determine extent of road;*
- b) *determine Parcel ownership as the land was in a company name;*
- c) *issue a Cease and Desist Order as soon as possible to the owners of the relevant parcels; and*
- d) *obtain a warrant that permitted DoE staff to enter the property and collect evidence; and*
- e) *consider the necessity to request that the National Conservation Council issue an Interim Directive that would protect Blue iguanas on the property where they have historically been released (i.e. the Salina Reserve and Colliers Wilderness Reserve) and property that was directly affected by unpermitted road construction.*

*Under issue of a Warrant, in February 2023, the DoE conducted a site visit and found evidence of ‘take’ of four protected species:*

- a) *Agalinis kingsii – Part 1 Schedule 1 Protected Species under the National Conservation Act, assessed as critically endangered on the IUCN Red List*
- b) *Buttonwood (Conocarpus erectus) – Part 2 Schedule 1 Protected Species under the National Conservation Act with an adopted Conservation Plan*
- c) *Blue Iguanas (Cyclura lewisi) – Part 1 Schedule 1 Protected Species under the National Conservation Act, assessed as endangered on the IUCN Red List*
- d) *Black Mastic (Terminalia eriostachya) – Part 1 Schedule 1 Protected Species under the National Conservation Act, assessed as endangered on the IUCN Red List*

*Following consultation with the Director of the Department of Public Prosecution and the relevant legal tests, charges were laid under the National Conservation Act against the Applicant for the take of Buttonwood as a protected species.*

*Although we do not have full records of correspondence between the Department of Planning and the Applicant, it appears that in March 2023, the Department of Planning requested an after-the-fact planning application. The information provided by the Applicant states that on 8 March 2023, the Department of Planning wrote, “As it relates to the construction of a road (whether public or private), the Director has advised that planning permission is required as it is not listed as an exemption under Section 13 of the Development and Planning Act (2021 Revision). We look forward to receiving an application at your earliest convenience.”*

*The 2.03 mile road was unlawful, and should have been subject to enforcement action by the Department of Planning in 2019 following the advice from the Attorney General’s Chambers. Now, given how egregious the offence is, we believe it would have been more appropriate to prosecute under the Development and Planning Act, as we have done for environmental offences under the National Conservation Act. The matter is pending in the courts.*

*Granting after-the-fact approval of this road would show that Department of Planning condones such unlawful acts, subject to the minor administrative burden of applying for after-the-fact permission. In addition, given that we have prosecuted for ‘take’ of a*

protected species, it is our hope and intention that the Courts will require restoration under Section 38(2) of the NCA, which states,

*“Where a person has been convicted of any offence under this Law, **the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order** in addition to any other punishment that may be imposed under the Law having any or all of the following effects:*

*(c) directing the offender to take some action as the court considers appropriate **to remedy or avoid any harm to the environment or to any natural resources that results or may result from the act or omission that constitute the offence.**”*

*Having the CPA permit the road and the extension ahead of the pending Court case being determined reduces the options available to the Court to pursue.*

### **Blue Iguanas**

*The Grand Cayman Blue Iguana (Cyclura lewisi) is a large herbivorous reptile unique to the Cayman Islands, found only on Grand Cayman, and listed in Part 1 of Schedule 1 of the Act. This protected species has been restored from the brink of extinction through captive breeding, head-starting and release into protected areas which started in 1990 and is ongoing today. The population restoration has been focussed in the National Trust for the Cayman Islands’ Salina Reserve, and in the Colliers Wilderness Reserve which is Crown property leased to and managed by the National Trust. A smaller sub-population has been restored to the Q.E. II Botanic Park. The National Trust’s Blue Iguana Conservation team is engaged in a multi-year research effort to gain a better understanding of the geographic extent and population size of Grand Cayman Blue Iguanas, which will inform conservation strategy and underpin a full Conservation Plan for this species.*

*On 13 March 2023, the National Conservation Council issued an Interim Directive for the Protection of the Grand Cayman Blue Iguana and identified the Colliers Wilderness Reserve, the Salina Reserve and land parcels Block 66A Parcel 20, Block 69A Parcels 29, 30, 31, 50 and 341 as interim Critical Habitat for the Grand Cayman Blue Iguana. As per Sections 41 (4) and (5) of the National Conservation Act (NCA), this designation of critical habitat means that adverse impacts to the habitat either have to be avoided or be able to be mitigated with the imposition of conditions of approval. It also means that the National Conservation Council is able to direct the inclusion of those conditions in any planning permission that may be given where an adverse effect on the critical habitat would or would be likely to occur.*

*Mapping of wild Grand Cayman Blue Iguana sightings show that extensive dispersal from the Salina and Colliers Wilderness Reserves has occurred, and nesting and breeding are occurring outside and between these areas. During the execution of our Warrant, we noted Blue Iguanas present at the application site (see Figures 9 and 10).*



*Figure 9. A young blue iguana on the after-the-fact road (Source: DoE, 2023)*





*Figure 10. Evidence of tail drags along the after-the-fact road (Source: DoE, 2023)*

*Experience with the Blue Iguana on Grand Cayman and the closely related Sister Islands Rock Iguana has shown that two primary human-associated threats to their survival are road kills due to cars travelling faster than the iguana or the driver can react, and unrestrained alien species (cats and dogs, but also rats) killing various age classes of the indigenous iguanas. Outside these two key threats and other related risks (such as feeding of unsuitable food items to iguanas by people) local iguanas can successfully cohabitate in areas with low density human development.*

*The adverse environmental impacts associated with the after-the-fact road can be grouped together into construction effects and operational effects.*

*The construction effects are as follows:*

- *In the simplest terms, converting blue iguana habitat into a road means there is less blue iguana habitat. Therefore, the after-the-fact road and the extension will result in the direct loss of critical habitat for Blue Iguanas equivalent to the area already impacted and the area which would be impacted by the proposed road extension. The*



*replacement of Blue Iguana habitat with fill material impairs the capacity of the area to function as a habitat beneficial to wildlife.*

- *Blue iguanas are primarily terrestrial and occupy rockholes and low tree cavities. By constructing the road without any oversight from the Department of Environment, the land clearing and road construction may have resulted in harm to adult blue iguanas and has resulted in loss of habitat in the loss of their rockholes and low tree cavity refugia. The proposed road extension may result in additional adverse effects on the loss of their refugia which impairs the capacity of the area to function as a habitat beneficial to wildlife.*

*The operational effects are as follows:*

- *The presence of a road will introduce more conflict with vehicles and most obviously in cases of Blue Iguanas being killed by vehicular impacts, will hinder or impede the movement of wildlife across the road.*
- *The road will provide easier access for cats and dogs to predate on Blue Iguanas impairing the capacity of the area to function as a habitat beneficial to wildlife.*
- *The road creates habitat fragmentation and creates substrate for the proliferation of invasive plant species which degrades the overall habitat.*

#### **Section 41(4) Considerations**

*The site is within designated critical habitat for the Grand Cayman Blue Iguana. The approval of the after-the-fact road and of the extension of the road would or would be likely to cause an adverse effect on the designated critical habitat, namely:*

- *Section 2(a) of the NCA: Alterations that may impair the capacity of the area to function as a habitat beneficial to wildlife,*
- *Section 2(j) of the NCA: Alterations that may hinder or impede the movement or migration of wildlife*

*On the basis of the above information and in accordance with the recent Court of Appeal judgement, in the exercise of powers which have been conferred through express delegation by the National Conservation Council pursuant to section 3(13) of the National Conservation Act (2013), the Director of DoE considers it necessary for **the Central Planning Authority to apply for approval from the NCC under section 41(4) of the NCA prior to determining this application.***

*Should the CPA wish to propose conditions as a means of mitigating the adverse impacts identified, please provide those conditions at the time of application for the DoE's review and approval.*

#### **APPLICANT'S LETTERS**

*See Appendix A*

## **OBJECTOR'S LETTER**

*As a result of our meeting with the applicant, and based on his assurances that the application is for a gated private road for his personal use only, and with no further enhancements or future commercialization of the property intended, we do not feel we must object to the applicant's long-term plan for the property as proposed. However, we must state our objection that the road was built without Planning approval. It has created a divide between two key National Trust-owned protected areas which form the main habitat for the wild Blue Iguana population, as well as having unknown impacts during construction in this sensitive area. Appropriate permissions must be sought prior to construction to ensure that it is done with sufficient opportunity for comments from the public and organizations like the National Trust to be taken into consideration in the decision-making process.*

*Should the situation regarding the road change, or should other applications be made regarding the affected parcels, we reserve the right to object in the interest of our stakeholders, the people of the Cayman Islands. As this road is located between two protected areas. The National Trust for the Cayman Islands has been protecting, managing and expanding our land holdings in this area in an effort to protect and preserve native plants and animals, including the rare and iconic Grand Cayman Blue Iguana. We have a vested financial interest and legal responsibility to ensure the safety and security of these properties held in trust for present and future generations.*

*We request that speed bumps or other speed control measures are added to the road as a condition of planning approval. We also hope that we can work with the owner to ensure that Blue Iguana food plants are retained as much as possible. We invite the owner to review the National Trust's Blue Iguana Garden project and incorporate it into their sustainable farming plan so that we can work together to assure a future for this iconic species.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The subject properties consist of 299 acres and are located southwest of Sunnyfield Road in North Side.

The properties have been subject to linear land clearing and road construction. Therefore one aspect of the application is for after the fact permission.

The other aspect of the application is for new linear land clearing and road construction to facilitate a 662.6' extension of the existing after the fact road to the south.

### **Zoning**

The properties are zoned Agricultural/Residential.

## **2.0 APPLICATIONS**

### **(Items 2.6 to 2.32)**

#### **2.6 LEGOLAND REAL ESTATE LTD. (Arco) Block 14BJ Parcels 7 to 11 & 16 and Block 14E Parcel 661 (P23-1098) (\$95.0 million) (NP)**

Application for 162 apartments.

##### **FACTS**

<i>Location</i>	Boilers Road, George Town
<i>Zoning</i>	<b>General Commercial</b>
<i>Notification Results</i>	No objections
<i>Parcel size</i>	1.468 acres
<i>Parcel size required</i>	20,000 sq ft
<i>Current use</i>	Various residential & commercial buildings
<i>Proposed use</i>	Apartments
<i>Building Footprint</i>	22,018 sq ft
<i>Building Area</i>	276,043 sq ft
<i>Units Permitted</i>	CPA Discretion
<i>Units Proposed</i>	162
<i>Bedrooms Permitted</i>	CPA Discretion
<i>Bedrooms Proposed</i>	189
<i>Parking Required</i>	243
<i>Parking Proposed</i>	251

**Recommendation:** Discuss planning permission for the following reasons:

- 1) Zoning
- 2) Density

##### **AGENCY COMMENTS**

The following comments have been received to date:

## **Department of Environment (January 4, 2024)**

*This review is provided by the Director of the Department of Environment under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*

### **Site Overview**

*The application site is man-modified with existing residential and commercial buildings on site.*

### **Advice for the Applicant**

*We recommend that the applicant consider incorporating Sustainable Drainage Systems (SuDS) into the stormwater management for the site to mitigate against the inundation of the surrounding area. SuDS are drainage solutions that provide an alternative to the direct channelling of surface water through pipes and deep wells. By mimicking natural drainage regimes, SuDS aim to reduce surface water flooding, improve water quality, and enhance the amenity and biodiversity value of the environment. SuDS achieve this by lowering flow rates, increasing water storage capacity, and reducing the transport of pollution to the water environment. The applicant may also wish to consider the use of porous or permeable surfaces in areas of hardstanding.*

*In addition, we recommend that the applicant plants and incorporates native vegetation such as buttonwood into the landscaping scheme. Native plants are best suited for the conditions of the site, including the temperature and the amount of rainfall. They are climate-appropriate and require less maintenance and irrigation. Landscaping with native vegetation also provides ecological benefits by creating habitat and food for native fauna such as birds and butterflies, promoting biodiversity and providing valuable ecosystem services.*

*The DoE also recommends that, wherever possible, sustainable design and energy efficiency features be included in projects such as this one. We especially encourage renewable energy installations given that the Cayman Islands has a target of 70% of energy generation being renewably sourced by the year 2037 (Cayman Islands National Energy Policy 2017-2037). Photovoltaic solar panels in particular could be installed on suitable roof space or over the proposed parking spaces.*

### **Advice for the Central Planning Authority/Planning Department**

*Best management practices should be adhered to during construction to reduce impacts on the environment. In particular, control measures should be put in place to address pollution from expanded polystyrene (EPS) beads on construction sites, for example, those used in insulating concrete forms (ICF). Polystyrene is not biodegradable, and the EPS beads can be consumed by wildlife when they enter the food chain. These beads are very difficult to remove once they enter the environment and they do not naturally break down.*

### **Section 41(3) Recommendations**

*If the Central Planning Authority or Planning Department is minded to grant planning permission for the proposed development, we recommend the inclusion of the following condition in the approval:*

- 1. If the construction uses insulating concrete forms (ICFs) or other polystyrene materials, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas or pollute the environment.*

### **Water Authority Cayman**

*Please be advised that the Water Authority's requirements for this development have been determined based on the understanding that the parcels in question are to be combined.*

#### **Wastewater Treatment and Disposal**

*The developer, or their agent, shall submit an Onsite Wastewater Treatment Proposal, per the attached Form, which meets the following requirements. Water Authority review and approval of the proposed system is a condition for obtaining a Building Permit.*

- The proposed development requires Aerobic Treatment Unit(s) with NSF/ANSI Standard 40 (or equivalent) certification that, when operated and maintained per manufacturer's guidelines, the system achieves effluent quality of 30 mg/L Biochemical Oxygen Demand and 30 mg/L Total Suspended Solids. The proposed system shall have a treatment capacity of at least 26,325 US gallons per day (gpd), based on the following calculations.*

<i>BUILDING</i>	<i>UNITS/BLDG</i>	<i>GPD/UNIT</i>	<i>GPD</i>
<i>The Eldemire</i>	<i>135 x 1-Bed Units</i>	<i>150gpd/1-Bed Unit</i>	<i>20,250</i>
	<i>27 x 2-Bed Units</i>	<i>225gpd/2-Bed Unit</i>	<i>6,075</i>
<i>TOTAL</i>			<i>26,325</i>

- Treated effluent from the ATU shall discharge to an effluent disposal well constructed by a licensed driller in strict accordance with the Authority's standards. The minimum well casing diameter for this development shall be 8''. Licensed drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.*
- To achieve gravity flow, treated effluent from the ATU must enter the disposal well at a minimum invert level of 4'9" above MSL. The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well, which fluctuates with tides and perching of non-saline effluent over saline groundwater.*



### Underground ATUs

- *The drawings indicate that the wastewater treatment plant is proposed to be buried and/or is located within a traffic area. The Water Authority will not approve buried ATUs with the exception of those proposed under approved handicapped parking\* OR within non-traffic, landscaped areas of the property.*

*Queries regarding the burial of ATUs and additional requirements can be forwarded to [development.control@waterauthority.ky](mailto:development.control@waterauthority.ky).*

*\* All components of the ATU must be located within the handicapped parking spaces.*

### Elevator Installation

- *Hydraulic elevators are required to have an approved pump with oil-sensing shut off installed in the sump pit. Specifications of the proposed pump shall be sent to the Water Authority at [development.control@waterauthority.ky](mailto:development.control@waterauthority.ky) for review and approval.*

### Generator and Fuel Storage Tank(s) Installation

- *In the event underground fuel storage tanks (USTs) are used the Authority requires the developer to install monitoring wells for the USTs. The exact number and location(s) of the monitoring wells will be determined by the Authority upon receipt of a detailed site plan showing location of the UST(s) and associated piping. The monitoring wells shall comply with the standard detail of the Water Authority linked below. All monitoring wells shall be accessible for inspection by the Authority. In the event above ground fuel storage tanks (ASTs) are used, monitoring wells will not be required.*

*[https://www.waterauthority.ky/upimages/download/USTMonitoringWellFeb2013\\_1445632994.pdf](https://www.waterauthority.ky/upimages/download/USTMonitoringWellFeb2013_1445632994.pdf)*

### Water Supply

*The proposed development site is located within the Water Authority's piped water supply area.*

- *The developer shall contact Water Authority's Engineering Services Department at 949-2837 without delay to be advised of the site-specific requirements for connection to the public water supply.*
- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- *The developer shall install the water supply infrastructure within the site, under the Water Authority's supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority's web page: <http://www.waterauthority.ky/water-infrastructure>*

*The Authority will not be held responsible for delays and/or additional costs incurred by the developer due to the developer's failure to provide sufficient notice to the Authority.*

### **Department of Environmental Health**

*Solid Waste Facility: This development requires (3) 8 cubic yard container with three per week servicing. NOTE: The drain for the enclosure must be plumbed to a garbage enclosure disposal well as per the Water Authority's specifications.*

*Swimming Pool: A swimming pool application must be submitted to DEH for review and approval prior to constructing the pool.*

### **National Roads Authority**

*Comments have yet to be received.*

### **Fire Department**

*The Fire Department has approved the proposal.*

### **Cayman Islands Airport Authority**

*The CIAA has no objections to this proposed development, provided that the building, or any extensions of the building do not exceed 46m AMSL.*

*The applicant has confirmed in writing that the height of the building will not exceed 46 metres AMSL.*

### **APPLICANT'S LETTER**

#### ***"THE ELDEMIRE" PROPOSED DENSITY.***

#### ***The revitalization of our capital***

*As part of the integral efforts from the Ministry of Planning, Agriculture, Housing and Infrastructure, aimed at bringing life and vibrancy back to Cayman's capital, The Eldemire is a project in line with George Town's Revitalization led by Legoland Real Estate Limited*

to capitalize of the projects that the Cayman Government is implementing in Downtown. **The role of the Planning Development Plan**

*The 1997 Planning Development Plan recognizes George Town as the most important urban center in the islands and permits more flexibility in use because of its maximum site coverage and building height allowance. The opportunity to bring residents to downtown is the best strategy to create a neighborhood where Caymanians can live, work and enjoy the historical central district. Government is inviting everyone to enjoy the new parks,*



*initiatives. This is a private initiative*

*event programming and opportunities to interact and have fun in town developing better street networks and public spaces.*

### **The Government initiatives**

*The George Town Revitalisation Initiative is a multi-year government project, designed to bring life and vibrancy back to Cayman's capital. It is the framework to create a dynamic, **mixed-use** town centre that supports the **everyday life of Cayman Islands residents**. Government is revitalizing George Town's historical sites into attractive green landmarks of our island's heritage whilst supporting **a modern and thriving urban culture**.*

### **THE ELDEMIRE IS A PLACE FOR OUR PEOPLE**

*We want to bring life and vibrancy back to our capital in response to the Government efforts. Proposing the allowable 10 stories to be of residential apartments is the best way*

*to give back to Caymanians the opportunity to enjoy the beautiful plans developed by Government. George Town will be connected by pedestrian walkways and shaded pocket parks, creating an enhanced experience for the residents of Cayman and not only the tourists visiting Georgetown.*

*162 Families living at The Eldemire will bring life to Georgetown. They will enjoy its amenities at walkable distances and work in the area avoiding the over use of cars. George Town is the home of our government, corporations, accessible deep-water port, commercial, retail. Dense residential ventures are needed to enhance its life.*

*The Eldemire looks to change George Town, into the vibrant, bustling community it should be. We believe like the Government that there is an opportunity to turn this around. The residents of The Eldemire will contribute to this flourishing of the city preserving our history, balancing development with conservation initiatives and and people's needs to quality living close to services and work.*



## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The subject properties are located on Boilers Road in George Town.

The proposal is for 162 apartment units with 189 bedrooms in a ten storey building. There would be 251 parking spaces.

### **Zoning**

The properties are zoned General Commercial.

### **Specific Issues**

#### **1) Zoning**

Regulation 13(10) states that residential development may be permitted on any or all floors of a building in a General Commercial zone, a Neighbourhood Commercial zone, or a Marine Commercial zone if

- a) the development is a replacement or redevelopment of an existing residential development;
- b) the development forms part of a mixed-use development situated on one parcel of land and the planned development includes a mixture of commercial and residential uses proposed for close interaction; or
- c) the development is located within areas General Commercial1, General Commercial 2, General Commercial 3, or General Commercial zone 4.

In this instance the proposal is replacing existing residential development and is entirely located within the General Commercial 1 zone. Therefore, residential uses are permitted on all floors of the building.

## 2) Density

The Regulations are silent upon the number of units in a General Commercial zone.

In these instances, the Authority typically looks to the nearest Residential zone for guidance.

The nearest residential zone is LDR to the west in this instance.

Regulation 9(8)(c) allows a maximum of 15 units per acre or 22 units for this size of property. Using the HDR provisions, 36 units would be allowed. Similarly, the LDR and HDR provisions would allow 35 and 69 bedrooms.

The applicant is proposing a total of 162 units and 189 bedrooms and the Authority should determine if this level of density is appropriate for the site and area.

## 3) Building height

CIAA has advised that the building cannot exceed 46 meters (150 feet) AMSL. The proposed building height is 130' and the applicant has submitted a drawing that the building won't exceed 145 AMSL.

### 2.7 ODIE C. DONALD (Darius Development) Block 43D Parcel 125 (P23-1058)(\$300,000) (JS)

Application for a beach kitchen and cabana.

#### **FACTS**

<i>Location</i>	Bodden town Road, Bodden town
<i>Zoning</i>	<b>Beach Resort Residential</b>
<i>Notification result</i>	No objection
<i>Parcel size proposed</i>	0.44 ac.
<i>Parcel size required</i>	19,166 sq. ft.



<i>Current use</i>	Existing house
<i>Proposed building size</i>	1383 sq. ft
<i>Total building site coverage</i>	12.4%
<i>Required parking</i>	see below
<i>Proposed parking</i>	5

**Recommendation:** Discuss the application, **for the following reasons:**

- 1) Proposed use
- 2) Parking
- 3) Lot size (0.44ac vs. 0.5ac)

### **AGENCY COMMENTS**

Comments from the National Roads Authority, Water Authority and Department of Environment are provided below.

#### **National Roads Authority**

December 15, 2023

*As per your memo dated December 6<sup>th</sup>, 2023 the NRA has reviewed the above-mentioned planning*

*proposal. Please find below our comments and recommendations based on the site plan provided.*

#### *General Issues*

- *Entrance and exit curves shall have no less than fifteen (15) feet radius curves, and have a width of twenty-four (24) ft.*

#### *Road Capacity Issues*

*The traffic demand to be generated by the above proposed a Beach Kitchen and a residential cabana of 1,733 sq. ft. has been assessed in accordance with ITE Code 933 Fast Food w/o Drive Thru. The anticipated traffic to be added onto Bodden Town Road is as follows:*

Expected Daily Trip	AM Peak Hour Total Traffic	AM Peak In 60%	AM Peak Out 40%	PM Peak Hour Total Traffic	PM Peak In 51%	PM Peak Out 49%
1,217	75	45	30	44	23	22

*Based on these estimates, the impact of the proposed development onto Bodden Town Road is considered to be minimal.*

#### *Access and Traffic Management Issues*

*One-way driveway aisles with diagonal parking shall be a minimum of twenty (20) ft wide.*

*A six (6) foot sidewalk shall be constructed on Bodden Road, within the property boundary, to NRA standards.*

*Tire stops (if used) shall be placed in parking spaces such that the length of the parking space is not reduced below the sixteen (16) feet minimum.*

#### *Stormwater Management Issues*

*The applicant is encouraged to implement state-of-the-art techniques that manage stormwater runoff within the subject parcel and retain existing drainage characteristics of the site as much as is feasible through innovative design and use of alternative construction techniques. However, it is critical that the development be designed so that post-development stormwater runoff is no worse than pre-development runoff. To that effect, the following requirements should be observed:*

- The applicant shall demonstrate, prior to the issuance of any Building Permits, that the Stormwater Management system is designed to embrace storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and ensure that surrounding properties and/or nearby roads are not subject to stormwater runoff from the subject site.*
- The stormwater management plan shall include spot levels (existing and finished levels) with details of the overall runoff scheme. Please have applicant provide this information prior to the issuance of a building permit.*
- Construct a gentle 'hump' at the entrance/exit (along the entire width of each driveway) in order to prevent stormwater runoff from and onto Bodden Road.*
- Curbing is required for the parking areas to control stormwater runoff.*
- Roof water runoff should not drain freely over the parking area or onto surrounding property. Note that unconnected downspouts are not acceptable. We recommend piped connection to catch basins or alternative stormwater detention devices. Catch basins are to be networked, please have applicant to provide locations of such wells along with details of depth and diameter prior to the issuance of any Building Permits.*
- Sidewalk detail needs to be provided as per NRA specifications. See (<https://www.caymanroads.com/upload/files/3/Sidewalk%20&%20Curbing%20Details.pdf>)*

*At the inspection stage for obtaining a Certificate of Occupancy, the applicant shall demonstrate that the installed system will perform to the standard given. The National Roads Authority wishes to bring to the attention of the Planning Department that non-compliance with the above-noted stormwater requirements would cause a road encroachment under Section 16 (g) of The Roads Act (2005 Revision). For the purpose of this Act, Section 16(g) defines encroachment on a road as*

*"any artificial canal, conduit, pipe or raised structure from which any water or other liquid escapes on to any road which would not but for the existence of such canal, conduit, pipe or raised structure have done so, whether or not such canal, conduit, pipe or raised structure adjoins the said road;"*

*Failure in meeting these requirements will require immediate remedial measures from the applicant.*

February 2, 2024

*As per your memo dated January 24", 2024 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

*The NRA has no issues or concerns with the above noted Beach Kitchen. However, all other conditions remain as referenced in memorandum dated December 15<sup>th</sup>, 2023.*

*Should you have any questions, please do not hesitate to contact the undersigned.*

### **Water Authority**

*Please be advised that the Water Authority's requirements for this development are as follows:*

#### **Wastewater Treatment & Disposal**

- *The developer shall provide a **septic tank(s)** with a capacity of at least 1,500 US gallons for the proposed, based on the following calculations:*

<b>BUILDING</b>	<b>UNITS/BLDG</b>	<b>GPD/UNIT</b>	<b>GPD</b>
<i>Existing House</i>	<i>2 x 1-Bed Units</i>	<i>150gpd/1-Bed Unit</i>	<i>300</i>
<i>Proposed Kitchen</i>	<i>379 sq.ft.</i>	<i>379sq.ft. x 1.0</i>	<i>379</i>
<b>TOTAL</b>			<b>679</b>

- *The septic tank shall be constructed in strict accordance with the Authority's standards. Each compartment shall have a manhole to allow for inspection and service. Manholes shall extend to or above grade and be fitted with covers that provide a water-tight seal and that can be opened and closed by one person with standard tools. Where septic tanks are located in traffic areas, specifications for a traffic-rated tank and covers are required.*
- *Treated effluent from the septic tank shall discharge to an effluent disposal well constructed by a licensed driller in strict accordance with the Authority's standards. The minimum well casing diameter for this development shall be 4". Licensed drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.*
- *To achieve gravity flow, treated effluent from the septic tank shall enter the disposal well at a minimum invert level of 5'11" above MSL. The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well,*

*which fluctuates with tides and perching of non-saline effluent over saline groundwater.*

***For Water Authority approval at BCU stage, a detailed profile drawing of the proposed wastewater treatment system is required. The drawing shall indicate:***

- 1. If the proposed septic tank will be site-built or precast. (You may use the Water Authority drawing for site-built tanks available from the Authorities website or a Precast septic tank drawing if you intend to use a Precast Tank). Site Built Tanks shall be coated with Epoxytec CPP or ANSI/NSF-61 certified equivalent.*
- 2. All dimensions and materials shall be provided for any site-built tanks.*
- 3. Manhole extensions are permitted up to a maximum of 24" below finished grade.*
- 4. Detailed specifications including make and model for (H-20) traffic-rated covers for septic tanks proposed to be located within traffic areas.*
- 5. A detailed profile cross-section of the wastewater system clearly showing the plumbing from building stub out to the effluent disposal well achieving the minimum invert connection specified above. (Alternatively details of proposed lift station shall be required)*
- 6. The Water Authorities updated 2020 effluent disposal well specifications.*
- 7. A 30ft horizontal separation between the effluent disposal well and any stormwater drainage wells.*

#### **Wastewater Treatment for Existing Structure**

- The existing building on the parcel are currently served by a septic tank. The Water Authority advises that all wastewater infrastructure, including septic tanks, deep wells, ATUs, etc. must be contained within the boundaries of the parcel on which the building stands.***

#### **Change-of-Use with Existing Septic Tank**

- If the developer proposes to utilize the existing septic tank and/or disposal well, the system shall be inspected and serviced per the Water Authority's Septic Tank Inspection Form.***

***Septic Tank Inspection Form:*** <https://bit.ly/2RO8MBB>

*The completed inspection form shall be returned to the Water Authority for review and determination as to whether the existing system meets Water Authority design specifications. Any deficiencies noted will require repair or replacement **prior to** final approval for certificate of occupancy.*

#### **Decommission Existing Septic Tank**

- The existing septic tank shall be decommissioned as per the Water Authority's Best Management Practices (BMP's):***

[http://www.waterauthority.ky/upimages/download/BMPs\\_abandoned\\_WW\\_systems11423220782.pdf](http://www.waterauthority.ky/upimages/download/BMPs_abandoned_WW_systems11423220782.pdf)

### **Traffic Rated Tank and Covers**

- *The drawings indicate the septic tank is proposed to be located within a traffic area. **Therefore, a traffic rated tank and covers are required.** The Water Authority requires that manhole covers be traffic rated heavy duty to meet AASHTO H-20 loadings of 16,000lb wheel loads and sealed with a gasket or O-ring. Covers and frames shall be manufactured from ductile iron or gray iron complying with the requirements of ASTM A-48 Class 35.*

### **Buried Septic Tank**

- ***The drawings indicate that the septic tank is proposed to be buried under a structure.** Please note, the Water Authority will not accept septic tanks located under proposed buildings/structures. Burial of septic tanks is acceptable in parking spaces and driveways **only**, granted all other Water Authority requirements are met.*

*Queries regarding burial of septic tanks and additional requirements can be forwarded to [development.control@waterauthority.ky](mailto:development.control@waterauthority.ky).*

### **Grease Interceptor Required**

- *A grease interceptor with a **minimum capacity of 1,004 US gallons** is required to pre-treat flows from kitchen fixtures and equipment with grease-laden waste; e.g., pot sinks, pre-rinse sinks; dishwashers, soup kettles or similar devices; and floor drains. The outlet of the grease interceptor shall be plumbed to the sanitary sewage line leading to the septic tank. Where two tanks are used to achieve the required capacity, they shall be installed in series with the larger tank first (600 US gallon minimum). Note: All developments proposing to utilize a commercial dish washer will have to install a drain tempering valve (DTV) before the grease interceptor.*

### **Water Supply**

*The proposed development site is located within the Water Authority's piped water supply area.*

- *The developer shall contact Water Authority's Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the public water supply.*
- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- *The developer shall install the water supply infrastructure within the site, under the Water Authority's supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority's web page: <http://www.waterauthority.ky/water-infrastructure>*

***The Authority shall not be held responsible for delays and/or additional costs incurred by the developer due to the developer's failure to provide sufficient notice to the Authority.***

## **Department of Environment**

*This review is provided by the Director of the Department of Environment (DoE) under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*

### **Site Overview**

*The application site predominantly consists of man-modified, however, the beach is a turtle nesting habitat.*

### **Advice for the Applicant**

*We recommend that the applicant plants and incorporates native coastal vegetation into the landscaping scheme. Coastal habitat incorporates a variety of salt and wind-tolerant flora. Coastal vegetation provides habitat for native wildlife in addition to stabilizing the shoreline and reducing erosion. As the application site is a turtle nesting beach, coastal vegetation is therefore important for the integrity of the beach and to ensure there is an appropriate nesting habitat for sea turtles. Beach vegetation is also thought to play an important role in sea turtle nest site selection, hatch success, hatchling fitness, sex ratio, and their ability to find the sea. Native plants are best suited for the conditions of the site, including the temperature and the amount of rainfall. They are climate-appropriate and require less maintenance and irrigation. Landscaping with native vegetation also provides ecological benefits by creating habitat and food for native fauna such as birds and butterflies, promoting biodiversity and providing valuable ecosystem services.*

### **Advice for the Central Planning Authority/Planning Department**

#### **Potential Impacts on Marine Turtles**

*The main threats to sea turtles from development on turtle nesting beaches are:*

- *Loss of coastal vegetation;*
- *Construction on the beach directly or indirectly impacting mature and hatchling sea turtles; and*
- *Artificial lighting causing mature females to be deterred from nesting and hatchling turtles to crawl away from the sea, where they die from dehydration, exhaustion, predators, or vehicles.*

#### **Construction Impacts**

*Operating heavy machinery during land clearing and construction presents a threat to nesting sea turtles. Construction works not only disturb the physical nesting habitat but heavy machinery and associated works can crush or bury baby sea turtles and turtle nests.*

*The excavation of the foundations will likely result in a large quantity of sand. The sand is a key component of what makes the application site good for sea turtles. We recommend that any excavated sand is retained on-site.*

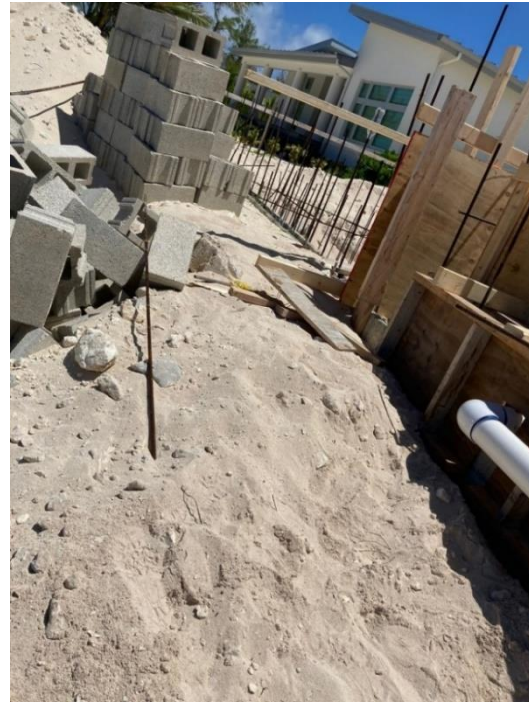
*Nesting sea turtles often use vegetation as a cue for nesting, and will crawl landwards up the beach until they reach the vegetation, or on a modified beach, a hard structure. When the vegetation is removed for construction, sea turtles can enter construction sites and be*



harmed. Figures 1 to 4 show sea turtle tracks directly up to construction sites. The DoE has also been called to respond numerous times to sea turtles who have become trapped in construction sites. Figure 5 shows a sea turtle hatchling which was killed due to heavy equipment being operated on the beach.



*Figures 1-2. Sea turtle tracks show that the turtle crawled up the beach until it reached a construction site (Source: DoE and Tammy Kelderman, 2021). The fence in Figure 1 is dangerous to sea turtles as it is sharp, rusty, and not secure.*



*Figures 3-4. DoE photos showing turtle tracks within a construction site on a turtle nesting beach. This site did not have temporary beachside construction fencing to prevent turtles from entering the site. The turtle could have or may have been injured by construction materials and debris on-site (Source: DoE, 2023).*



*Figure 5. A dead sea turtle hatchling that was killed by heavy equipment operating on the beach (Source: DoE, 2022).*

*For these reasons, construction fencing suitable for excluding turtles must be installed before the commencement of site works. Mesh fencing, Heras fencing, and chainlink fencing are all **unacceptable** as they can be dangerous to turtles, and do not exclude them*



*from the site. Mature green sea turtles weigh around 300 to 400 lbs. and are capable and strong diggers.*

*To ensure that there is ample beach for sea turtles to nest and ample space for construction works, we recommend that the construction fencing is a minimum of 75 feet from the Mean High Water Mark (MHW).*

*Temporary beachside construction fencing (as shown in Figure 6) must be:*

- *Located as far landward as possible to leave room/habitat for the turtles to nest during the work;*
- *Made from a sturdy/solid material like plywood with no gaps (i.e. not chainlink fencing or the orange plastic fencing with holes as hatchlings can crawl through these and adults can knock it down or become tangled);*
- *Embedded at least 2 feet into the sand so that turtles cannot dig it out or crawl under;*
- *Installed in a manner that any nailing of the wood will be done so that the sharp ends are located on the landside of the fencing to prevent injury to turtles;*
- *Inspected by the DoE after installation and written approval shall be obtained from the DoE that the installed fence is suitable for the exclusion of turtles; and*
- *Suitable to contain all excavated material, construction materials, and demolition waste landward of the fencing.*



*Figure 6. An example of suitable construction fencing to protect turtles (Source: DoE, 2022).*

#### *Artificial Lighting*

*Artificial lighting on and around turtle nesting beaches is one of the greatest threats to the survival of Cayman's endangered sea turtle nesting populations. Bright lights on or near the beach can deter female turtles from nesting and cause baby turtles to crawl away from the sea, where they die from dehydration, exhaustion, predators, or vehicles.*

*Turtle friendly lighting has been a legal requirement in ordinances in the United States for over 30 years. It is a proven solution to prevent the misorientation of sea turtles whilst safely and effectively lighting beachside properties. The Department strongly recommends the use of turtle friendly lighting on turtle nesting beaches. Figures 7-9 show examples of properties in Grand Cayman that have turtle friendly lighting installed.*



*Figures 7-9. Properties retrofitted to turtle friendly lighting along Seven Mile Beach, Grand Cayman (Source: DoE, various).*

*Best management practices should be adhered to during construction to reduce impacts on the environment. In particular, control measures should be put in place to address pollution from expanded polystyrene (EPS) beads on construction sites, for example, those used in insulating concrete forms (ICF). Polystyrene is not biodegradable, and the EPS beads can be consumed by wildlife when they enter the food chain. These beads are very difficult to remove once they enter the environment and they do not naturally break down.*

#### **Section 41(3) Recommendations**

*If the Central Planning Authority or Planning Department is minded to grant planning permission for the proposed modification, we recommend the inclusion of the following conditions in the approval:*

##### *Prior to Any Site Works*

- 1. Prior to the commencement of any site works such as clearing, filling, grading and road construction, the property owner shall contact the Department of Environment to check for the presence of turtle nests written approval shall be obtained from the Department of Environment that no nests will be impacted by the commencement of works.*

##### *Prior to the Issuance of a Building Permit*

- 1. Prior to the issuance of a Building Permit, the applicant shall prepare and submit a plan for review and approval to the Department of Environment for turtle friendly lighting, which minimises the impacts on sea turtles. Guidance on developing a lighting plan can be found in the Department of Environment's Turtle Friendly Lighting: Technical Advice Note (September 2018) available at <https://doe.ky/marine/turtles/tfl/>.*

*The DoE's written approval must be received by the Planning Department prior to the issuance of the Building Permit.*

- 2. Prior to the issuance of a Building Permit, beachside construction fencing associated with the works shall be installed and be positioned a minimum of 75 ft from the Mean High Water Mark. The fencing shall be erected so that it fully encloses the beach-facing area of works and is embedded at least 2 feet into the beach profile to prevent turtles from entering the construction site or digging under the fencing. The applicant shall liaise directly with the Department of Environment for requirements guidance regarding this fencing. The Department of Environment will inspect the fencing and confirmation of the Department of Environment's written approval must be received by the Planning Department prior to the issuance of the Building Permit.*
- 3. Prior to the installation of the beachside construction fencing, the property owner shall contact the Department of Environment to check for the presence of turtle nests and to ensure that no nests will be impacted by the installation of the embedded fencing or the commencement of construction works. The Department of Environment's written approval of the temporary beach construction fence must be received by the Planning Department prior to the issuance of the Building Permit.*

#### *During Construction*

- 1. All construction materials including excavated materials and/or debris shall be stockpiled at least 75 ft. from the marine environment and on the landward side of the construction fencing.*
- 2. Any sand that is to be excavated during construction shall be retained on-site and beach-quality sand shall be placed along the active beach profile. Placement of the sand on the beach during turtle nesting season will require the written consent of the Department of Environment, to ensure that no nests will be impacted. If there is an excessive quantity of sand that cannot be accommodated on-site, and the applicant would like to move such sand offsite, it shall be the subject of a separate consultation with the National Conservation Council.*
- 3. If the construction uses insulating concrete forms (ICFs) or other polystyrene materials, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas or pollute the environment.*

#### *Prior to the Issuance of a Certificate of Occupancy*

- 1. Lighting and/or specifications for visible light transmittance shall be installed and maintained in accordance with the turtle friendly lighting plan which has been reviewed and approved by the Department of Environment. Once construction is complete, prior to the issuance of the Certificate of Occupancy, the Department of Environment will inspect the installed lighting for compliance with the approved turtle friendly lighting plan. Confirmation of the Department of Environment's written approval of the installed exterior lighting after the inspection must be received by the Planning Department prior to the issuance of the Certificate of Occupancy.*



## **APPLICANT'S LETTER**

*With respect to our submission for a commercial beach kitchen and residential cabana on 43D 125 which is accessed via Bodden Town Road, we hereby request variances as follows:*

- 1. Lot Size Variance for development on the 0.45 Acre (19495 sq.ft.) parcel which requires a minimum of 0.5 Acres (21,780 sq.ft.) The variance request represents 0.05 acre or approx. 10% below the required minimum.*

*In making the application for such a variance, our client is mindful of provisions of Regulations 8 (13) of the Development and Planning Regulations, and would submit that there is sufficient reason and exceptional circumstances that would permit such setback allowance, in that:*

- (i) The characteristics of the proposed development are consistent with the character of the surrounding area.*
- (ii) The proposed structures will not be materially detrimental to persons residing in the vicinity, to the adjacent properties, or to the neighboring public welfare.*

*Additionally, please take into consideration that the neighboring parcel 43D 126 to the east is also owned and occupied by the applicant of the subject parcel and the proposed development will operate as a takeout kitchen.*

*We thank you for your consideration of this matter and look forward to a favorable decision on this application in due course.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application site is located on Bodden Town Road, Bodden Town.

The application is for the construction of a beach kitchen and cabana.

### **Zoning**

The property is zoned Beach Resort Residential

### **Specific Issues**

#### **1) Proposed use**

Regulation 15(2)(d) states that in suitable locations in the BRR zone the Authority may allow tourism related development. The Authority needs to determine if the commercial beach kitchen and cabana is a tourist related development and if so, is the location suitable for such a use.

## 2) Parking

There is no specific parking requirement for a commercial beach kitchen, but should it and the cabana functioning together as a restaurant then the required parking for the restaurant would be 7 spaces. The existing house requires 1 space for a total required number of parking spaces of 8. The applicant is proposing 5.

## 3) Lot size

Regulation 15(4)(iii) the minimum lot size for apartment buildings, townhouses, cottage colonies, beach resorts, guest houses or tourist-related development is one half of an acre. The subject property is 0.44 ac.

### 2.8 BRIAN EARL (Jovan Kerr) Block 56C Parcel 90 (P23-0400) (\$200,000) (NP)

Application to add 2 units to an existing house to create 3 apartments.

#### **FACTS**

<i>Location</i>	Eiffel Drive, Frank Sound
<i>Zoning</i>	<b>Low Density Residential</b>
<i>Notification Results</i>	No objections
<i>Parcel size</i>	9,583.2 sq ft
<i>Parcel size required</i>	25,000 sq ft
<i>Current use</i>	House
<i>Proposed use</i>	3 Apartments
<i>Building Footprint</i>	1,738 sq ft
<i>Building Area</i>	2,238 sq ft
<i>Units Permitted</i>	3
<i>Units Proposed</i>	3
<i>Bedrooms Permitted</i>	5
<i>Bedrooms Proposed</i>	5
<i>Parking Required</i>	5
<i>Parking Proposed</i>	2

**Recommendation:** Discuss planning permission for the following reasons:

- 1) Suitability for Apartments
- 2) Lot Size (9,583.2 vs 25,000)
- 3) Side Setback (7'9" vs 15')
- 4) Lot Width (80' vs 100')

- 5) Number of Parking Spaces (2 vs 5)
- 6) Lack of turning radii for existing driveway

### **AGENCY COMMENTS**

Comments have been received from the following Departments:

#### **Department of Environment (September 21 2023)**

*This review is provided by the Director of the Department of Environment (DoE) under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*

*The application site is man-modified and of limited ecological value. We recommend that the applicant plants and incorporates native vegetation into the landscaping scheme. Native plants are best suited for the conditions of the site, including the temperature and the amount of rainfall. They are climate-appropriate and require less maintenance and irrigation. Landscaping with native vegetation also provides ecological benefits by creating habitat and food for native fauna such as birds and butterflies, promoting biodiversity and providing valuable ecosystem services.*

*Lastly, best management practices should be adhered to during construction to reduce impacts on the environment. In particular control measures should be put in place to address pollution from expanded polystyrene (EPS) beads on construction sites, for example, those used in insulating concrete forms (ICF). Polystyrene is not biodegradable, and the EPS beads can be consumed by wildlife when it enters the food chain. These beads are very difficult to remove once they enter the environment and they do not naturally break down.*

*If the Central Planning Authority or Planning Department is minded to grant planning permission for the proposed development, the DoE recommends the inclusion of the following condition in any planning permission:*

- 1. If the construction uses insulating concrete forms (ICF) or other polystyrene materials, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas.*

#### **Water Authority Cayman**

*Please be advised that the Water Authority's requirements for this development are as follows:*

*The Water Authority does not have data on the size/capacity of the existing septic tank. Pending an inspection, with the subsequent report forwarded to the Authority, the existing septic tank may be utilized if it is of a capacity of 1,250 US gallons or more.*

*Should the existing septic tank not meet the required capacity based on the calculations below, additional treatment capacity shall be installed.*

### Change-of-Use with Existing Septic Tank

*If the developer proposes to utilize the existing septic tank and/or disposal well, the system shall be inspected and serviced per the Water Authority's Septic Tank Inspection Form.*

*Septic Tank Inspection Form: <https://bit.ly/2RO8MBB>*

*The completed inspection form shall be returned to the Water Authority for review and determination as to whether the existing system meets Water Authority design specifications. Any deficiencies noted will require repair or replacement prior to final approval for certificate of occupancy.*

### Wastewater Treatment & Disposal

- The developer shall provide a septic tank(s) with a capacity of at least 1,250 US gallons for the proposed, based on the following calculations:*

<i>BUILDING</i>	<i>UNITS/BLDG</i>	<i>GPD/UNIT</i>	<i>GPD</i>
<i>Existing House</i>	<i>3-Bed House</i>	<i>300gpd/3-Bed</i>	<i>300</i>
<i>Proposed Additions</i>	<i>2 x 1-Bed Studio</i>	<i>150gpd/1-Bed</i>	<i>300</i>
<i>TOTAL</i>			<i>600</i>

- The septic tank shall be constructed in strict accordance with the Authority's standards. Each compartment shall have a manhole to allow for inspection and service. Manholes shall extend to or above grade and be fitted with covers that provide a water-tight seal and that can be opened and closed by one person with standard tools. Where septic tanks are located in traffic areas, specifications for a traffic-rated tank and covers are required.*
- Treated effluent from the septic tank shall discharge to an effluent disposal well constructed by a licensed driller in strict accordance with the Authority's standards. The minimum well casing diameter for this development shall be 4". Licensed drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.*
- To achieve gravity flow, treated effluent from the septic tank shall enter the disposal well at a minimum invert level of 4'5" above MSL. The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well, which fluctuates with tides and perching of non-saline effluent over saline groundwater.*

*For Water Authority approval at BCU stage, a detailed profile drawing of the proposed wastewater treatment system is required. The drawing shall indicate:*

- If the proposed septic tank will be site-built or precast. (You may use the Water Authority drawing for site-built tanks available from the Authorities website or a*

- Precast septic tank drawing if you intend to use a Precast Tank). Site Built Tanks shall be coated with Epoxytec CPP or ANSI/NSF-61 certified equivalent.*
- 2. All dimensions and materials shall be provided for any site-built tanks.*
  - 3. Manhole extensions are permitted up to a maximum of 24" below finished grade.*
  - 4. Detailed specifications including make and model for (H-20) traffic-rated covers for septic tanks proposed to be located within traffic areas.*
  - 5. A detailed profile cross-section of the wastewater system clearly showing the plumbing from building stub out to the effluent disposal well achieving the minimum invert connection specified above. (Alternatively details of proposed lift station shall be required)*
  - 6. The Water Authorities updated 2020 effluent disposal well specifications.*
  - 7. A 30ft horizontal separation between the effluent disposal well and any stormwater drainage wells.*

#### Water Supply

*The proposed development site is located within the Water Authority's piped water supply area.*

- The developer shall contact Water Authority's Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the public water supply.*
- The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- The developer shall install the water supply infrastructure within the site, under the Water Authority's supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority's web page: <http://www.waterauthority.ky/water-infrastructure>*

*The Authority shall not be held responsible for delays and/or additional costs incurred by the developer due to the developer's failure to provide sufficient notice to the Authority.*

#### **Department of Environmental Health**

##### *Solid Waste Facility:*

- 1. This development requires 5 (33) gallon bins and an enclosure built to the department's requirements.*
  - a. The enclosure should be located as closed to the curb as possible without impeding the flow of traffic.*
  - b. The enclosure should be provided with a gate to allow removal of the bins without having to lift it over the enclosure.*



## **National Roads Authority**

*As per your memo dated October 25th, 2023 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

*The NRA is content with the applicant satisfying our on Eiffel drive, however the entrance and exit curves shall have no less than fifteen (15) feet radius curves, and have a width of twenty-four (24) ft. All other conditions will remain as referenced in memorandum dated July 13th, 2023.*

### **JULY 13 COMMENTS**

*As per your memo dated June 1st, 2023 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

#### **General Issue**

*A six (6) foot sidewalk shall be constructed on Eiffel Drive, within the property boundary, to NRA standards.*

*Entrance and exit curves shall have no less than fifteen (15) feet radius curves, and have a width of twenty-four (24) ft.*

#### **Road Capacity Issues**

*The traffic demand to be generated by the above proposed development of 2238 sq. ft. has been assessed in accordance with ITE Code 220 – Multifamily Housing (Low-Rise). The anticipated traffic to be added onto Eiffel Drive is as follows:*

<b><i>Expected Daily Trip</i></b>	<b><i>AM Peak Hour Total Traffic</i></b>	<b><i>AM Peak In 20%</i></b>	<b><i>AM Peak Out 80%</i></b>	<b><i>PM Peak Hour Total Traffic</i></b>	<b><i>PM Peak In 65%</i></b>	<b><i>PM Peak Out 35%</i></b>
<b><i>13</i></b>	<b><i>1</i></b>	<b><i>0</i></b>	<b><i>1</i></b>	<b><i>1</i></b>	<b><i>1</i></b>	<b><i>0</i></b>

*Based on these estimates, the impact of the proposed development onto Eiffel Drive is considered to be minimal.*

#### **Access and Traffic Management Issues**

*One-way driveway aisles with diagonal parking shall be a minimum of twelve (12) to sixteen (16) ft wide.*

*Two-way driveway aisles shall be a minimum of twenty-two (22) ft wide.*

*Tire stops (if used) shall be place in parking spaces such that the length of the parking space is not reduced below the sixteen (16) feet minimum.*

#### **Stormwater Management Issues**

*The applicant is encouraged to implement state-of-the-art techniques that manage stormwater runoff **within the subject parcel** and retain existing drainage characteristics of the site as much as is feasible through innovative design and use of alternative construction techniques. However, it is critical that the development be designed so that post-development stormwater runoff is **no worse than** pre-development runoff. To that effect, the following requirements should be observed:*

- The applicant shall demonstrate, prior to the issuance of any Building Permits, that the Stormwater Management system is designed to embrace storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and ensure that surrounding properties and/or nearby roads are not subject to stormwater runoff from the subject site.*
- The stormwater management plan shall include spot levels (existing and finished levels) with details of the overall runoff scheme. Please have applicant provide this information prior to the issuance of a building permit.*
- Construct a gentle 'hump' at the entrance/exit (along the entire width of each driveway) in order to prevent stormwater runoff from and onto Eiffel Drive. Suggested dimensions of the 'hump' would be a width of 6 feet and a height of 2-4 inches. Trench drains often are not desirable.*
- Curbing is required for the parking areas to control stormwater runoff.*
- Roof water runoff should not drain freely over the parking area or onto surrounding property. Note that unconnected downspouts are not acceptable. We recommend piped connection to catch basins or alternative stormwater detention devices. Catch basins are to be networked, please have applicant to provide locations of such wells along with details of depth and diameter prior to the issuance of any Building Permits.*
- Sidewalk detail needs to be provided as per NRA specifications. See (<https://www.caymanroads.com/upload/files/3/Sidewalk%20&%20Curbing%20Details.pdf>)*

*At the inspection stage for obtaining a Certificate of Occupancy, the applicant shall demonstrate that the installed system will perform to the standard given. The National Roads Authority wishes to bring to the attention of the Planning Department that non-compliance with the above-noted stormwater requirements would cause a road encroachment under Section 16 (g) of The Roads Act (2005 Revision). For the purpose of this Act, Section 16(g) defines encroachment on a road as*

*"any artificial canal, conduit, pipe or raised structure from which any water or other liquid escapes on to any road which would not but for the existence of such canal, conduit, pipe or raised structure have done so, whether or not such canal, conduit, pipe or raised structure adjoins the said road;"*

## **Fire Department**

*The Fire Department has approved the proposal.*

## **APPLICANT'S LETTER**

*I hope this letter finds you well. I am writing to request a variance for the following issues regarding the construction plans for 7 Eiffel Drive:*

*Presently a three (3) bedroom concrete residential dwelling is located on the location. The existing structure is approx. 1512 sq. ft., having the front and back boundary's both measuring 80.0 ft. and the right and left measuring 113.9 ft. and 118.9 ft. respectively. We understand that the lot size is smaller than the required sq. ft. however all the lot within that zone is of the same dimensional character or smaller, with that said we crave your indulgence and consideration in your revision of this construction design.*

### **1. Concrete Driveway:**

*We understand that the requirement is to provide 5 spaces for the driveway. However, due to site constraints and limitations, we are unable to accommodate the full 5 spaces. Therefore, we kindly request a variance to allow for a total of 2 additional parking space to coincide with the existing 2 car drive way. We assure you that the concrete driveway will be constructed in compliance with all relevant regulations and standards.*

### **2. Solid Waste Enclosure:**

*We acknowledge the requirement for the solid waste enclosure to be positioned 6 feet from the side and road boundaries. The updated design will reflect that the enclosure is placed in accordance with this requirement to maintain the necessary distance from the boundaries and accessibility.*

### **3. Side walk:**

*We understand the need for this construction and the updated design will reflect same in compliance with the NRA and all other necessary regulations.*

### **4. Driveway Width and Entrance Radius:**

*We acknowledge the minimum requirement of a 24-foot width for the driveway. Additionally, we understand that a 15-foot radius at the entrance is desirable. While we strive to meet these specifications, we anticipate that they may be challenging to achieve given the site constraints. We kindly request that these dimensions be considered as a discussion point for the decision makers, taking into account the unique circumstances of the property.*

*We appreciate your understanding and consideration of our variance requests. We assure you that we are committed to adhering to all applicable regulations and standards to ensure the safety and functionality of the proposed construction.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The subject property is located on Eiffel Drive in Frank Sound.

The property presently contains a house.

The application is for a rear two storey addition to the house comprising two dwelling units, thereby creating a triplex on the property.

The applicant is proposing two parking spaces.

Adjacent landowners were notified by Registered Mail and no objections have been received.

### **Zoning**

The property is zoned Low Density Residential.

### **Specific Issues**

#### **1) Side setback (7'9" vs 15')**

Regulation 9(8)(j) requires a minimum side setback of 15 feet where the structure is two storeys.

The proposed side setback is 7'9".

The CPA should discuss whether a variance is warranted in this instance.

#### **2) Lot size (9,583.2 vs 25,000)**

Regulation 9(8)(f) requires a minimum lot size of 25,000 square feet for apartments.

The existing lot size is 9,583.2 square feet.

The CPA should discuss whether a variance is warranted in this instance.

#### **3) Lot width (80 vs 100)**

Regulation 9(8)(g) requires a minimum lot width of 100 feet for apartments.

The existing parcel has 80 feet of width.

The CPA should discuss whether a variance is warranted in this instance.

#### **4) Number of parking spaces (2 vs 5)**

Regulation 8(1)(vii) requires a minimum 5 parking spaces for three apartments.

The applicant is proposing a total of 2 parking spaces.

The CPA should discuss whether a variance is warranted in this instance.

#### **5) Suitability for apartments**

There do not appear to be any existing apartments or townhouses in the vicinity according to Cayman Land Information.

**2.9 PATRICK STREETE (GMJ Home Plans) Block 4E Parcel 688 (P23-0523) (\$98,000) (EJ)**

Application for after-the-fact change of use from house to three-apartments.

**FACTS**

<i>Location</i>	Bruce Ct, West Bay
<i>Zoning</i>	<b>HDR</b>
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.17 ac. (7,402 sq. ft.)
<i>Parcel size required</i>	5,000 sq. ft.
<i>Current use</i>	ATF Apartments
<i>Proposed building size</i>	1,717 sq. ft.
<i>Total building site coverage</i>	23.19%
<i>Allowable units</i>	4
<i>Proposed units</i>	3
<i>Allowable bedrooms</i>	7
<i>Proposed bedrooms</i>	3
<i>Required parking</i>	5
<i>Proposed parking</i>	5

**BACKGROUND**

November 3, 2008 (admin approve) – The Department granted permission for a house.

**Recommendation:** Discuss the application, **for the following reasons:**

- 1) Suitability
- 2) Rear setback variance (4'3" vs 20')

**AGENCY COMMENTS**

Comments from the Water Authority, National Roads Authority, Department of Environment and Fire Department are noted below.

**Water Authority**

*Please be advised that the Water Authority's requirements for this development are as follows:*

**Wastewater Treatment & Disposal**



- The developer shall provide a **septic tank(s)** with a capacity of at least 1,000 US gallons for the proposed, based on the following calculations:

<b>BUILDING</b>	<b>UNITS/BLDG</b>	<b>GPD/UNIT</b>	<b>GPD</b>
<i>Triplex</i>	<i>3 x 1-Bed Units</i>	<i>150gpd/1-Bed Unit</i>	<i>450</i>
<b>TOTAL</b>			<b>450</b>

- The septic tank shall be constructed in strict accordance with the Authority's standards. Each compartment shall have a manhole to allow for inspection and service. Manholes shall extend to or above grade and be fitted with covers that provide a water-tight seal and that can be opened and closed by one person with standard tools. Where septic tanks are located in traffic areas, specifications for a traffic-rated tank and covers are required.
- Treated effluent from the septic tank shall discharge to an effluent disposal well constructed by a licensed driller in strict accordance with the Authority's standards. The minimum well casing diameter for this development shall be 4". Licensed drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.
- To achieve gravity flow, treated effluent from the septic tank shall enter the disposal well at a minimum invert level of 4'5" above MSL. The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well, which fluctuates with tides and perching of non-saline effluent over saline groundwater.

**For Water Authority approval at BCU stage, a detailed profile drawing of the proposed wastewater treatment system is required. The drawing shall indicate:**

1. If the proposed septic tank will be site-built or precast. (You may use the Water Authority drawing for site-built tanks available from the Authorities website or a Precast septic tank drawing if you intend to use a Precast Tank). Site Built Tanks shall be coated with Epoxytec CPP or ANSI/NSF-61 certified equivalent.
2. All dimensions and materials shall be provided for any site-built tanks.
3. Manhole extensions are permitted up to a maximum of 24" below finished grade.
4. Detailed specifications including make and model for (H-20) traffic-rated covers for septic tanks proposed to be located within traffic areas.
5. A detailed profile cross-section of the wastewater system clearly showing the plumbing from building stub out to the effluent disposal well achieving the minimum invert connection specified above. (Alternatively details of proposed lift station shall be required)
6. The Water Authorities updated 2020 effluent disposal well specifications.

7. A 30ft horizontal separation between the effluent disposal well and any stormwater drainage wells.

### **Change-of-Use with Existing Septic Tank**

- *If the developer proposes to utilize the existing septic tank and/or disposal well, the system shall be inspected and serviced per the Water Authority's Septic Tank Inspection Form.*

**Septic Tank Inspection Form:** <https://bit.ly/2RO8MBB>

*The completed inspection form shall be returned to the Water Authority for review and determination as to whether the existing system meets Water Authority design specifications. Any deficiencies noted will require repair or replacement **prior to** final approval for certificate of occupancy.*

### **Water Supply**

*Please be advised that the proposed development site is located within the Cayman Water Company's (CWC) piped water supply area.*

- *The developer is required to notify the Cayman Water Company without delay, to be advised of the site-specific requirements for connection.*
- *The developer shall provide water supply infrastructure per CWC's specification and under CWC's supervision.*

### **National Roads Authority**

*As per your email dated January 3rd 2024, the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

#### **Road Capacity Issues**

*The traffic demand to be generated by a two-storey retail building of 1,717 SQ.FT. has been assessed in accordance with ITE Code 220 — Apartment. Thus, the assumed average trip rates per acre provided by the ITE for estimating the daily, AM and PM peak hour trips are 4.73, 0.17 and 0.84 respectively. The anticipated traffic to be added to Bruce CT is as follows:*

<i>Expected Daily Trips</i>	<i>AM Peak Hour Total Traffic</i>	<i>AM Peak 70% In</i>	<i>AM Peak 30% Out</i>	<i>PM Peak Hour Total Traffic</i>	<i>PM Peak 33% In</i>	<i>PM Peak 67% Out</i>
20	2	0	1	2	1	1

*Based on these estimates, the impact of the proposed development on Bruce CT is considered to be minimal, especially seeing that the traffic that will be generated from this development will not coincide with weekday peak hours.*

#### *Access and Traffic Management Issues*

*Entrance and exit curves shall be no less than fifteen (15) feet in radius. Entrances shall be twenty-four (24) feet wide.*

*A six (6) foot sidewalk shall be constructed on Bruce CT within the property boundary, to NRA standards.*

*Two-way driveway aisles shall be a minimum of twenty-two (22) ft. wide.*

*Tire stops (if used) shall be placed in parking spaces such that the length of the parking space is not reduced below the sixteen-foot (16') minimum.*

#### *Stormwater Management Issues*

*The applicant is encouraged to implement state-of-the-art techniques that manage stormwater runoff within the subject parcel and retain existing drainage characteristics of the site as much as is feasible through innovative design and the use of alternative construction techniques. However, it is critical that the development be designed so that post-development stormwater runoff is no worse than pre-development runoff. To that effect, the following requirements should be observed:*

- The applicant shall demonstrate, prior to the issuance of any Building Permits, that the Stormwater Management system is designed to embrace storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and ensure that surrounding properties and/or nearby roads are not subject to stormwater runoff from the subject site.*
- The stormwater management plan shall include spot levels (existing and finished levels) with details of the overall runoff scheme. Please have the applicant provide this information prior to the issuance of a building permit.*
- Construct a gentle 'hump' at the entrance/exit (along the entire width of each driveway) in order to prevent stormwater runoff from and onto Bruce CT. Suggested dimensions of the 'hump' would be a width of 6 feet and a height of 2-4 inches. Trench drains often are not desirable.*
- Curbing is required for the parking areas to control stormwater runoff.*
- Roof water runoff should not drain freely over the parking area or onto the surrounding property. Note that unconnected downspouts are not acceptable. We recommend piped connection to catch basins or alternative stormwater detention devices. Catch basins Per NRA specifications (available at: <https://www.caymanroads.com/upload/files/4/628e6599be2c9.pdf> are to be networked, please have the applicant provide locations of such wells along with details of depth and diameter prior to the issuance of any Building Permits.*

- *Sidewalk details need to be provided per NRA specifications (available on our website at: <https://www.caymanroads.com/upload/files/3/Sidewalk%20&%20Curbing%20Details>).*

*At the inspection stage for obtaining a Certificate of Occupancy, the applicant shall demonstrate that the installed system will perform to the standard given. The National Roads Authority wishes to bring to the attention of the Planning Department that non-compliance with the above-noted stormwater requirements would cause a road encroachment under Section 16 (g) of The Roads Act (2005 Revision).*

*Failure in meeting these requirements will require immediate remedial measures by the applicant.*

### **Department of Environment (January 17, 2023)**

*This review is provided by the Director of the Department of Environment under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013). The Department of Environment confirms that we have no comments at this time.*

### **Fire Department**

Approve for permit

### **APPLICANT'S LETTER**

*We write on behalf of the applicant, Mr. Patrick Streete, who is asking the Authority to allow the following variance to retain the after-the-fact biplex;*

*a) A rear yard setback variance — of 15'9" as the structure was built 4'3" from the rear boundary line instead of the required 20ft for areas zoned High-Density Residential (HDR).*

*We are therefore seeking the required variance for reasons stated as follows;*

- 1. Per section 8(13)(d) of the Planning Regulations, the owners of the adjacent properties were notified by registered mail and there are no objections to date.*
- 2. Per section 8(13)(b)(i) of the Planning Regulation, the characteristics of the proposed development are consistent with the character of the surrounding area; the majority of the properties along the access roads, Bruce Ct. and Schooner Ln, that lead to the subject parcel consist of existing structures with reduced setback.*
- 3. Per section 8(13)(b)(iii) of the Planning Regulations, the project has not appeared materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighborhood, or to the public welfare.*
- 4. In this instance, the strict application of the rear setback requirement of 20ft would cause significant financial hardship for Mr. Streete, who bought the property in 2023 with the current after-the-fact multi-family development. Realizing that he had inherited a rear setback violation, Mr. Streete is seeking the board's forgiveness and*

*humbly asks for approval for the dimensional variance, bearing in mind that the subject was not self-created.*

5. *The application complies with all other relevant planning requirements.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The after-the-fact change of use from house to three apartments is located on Bruce Ct. in West Bay.

### **Zoning**

The property is zoned High Density Residential.

### **Specific Issues**

#### **1) Suitability**

There does not appear to be other apartments in the surrounding area per a review of the Cayman land Information data base.

#### **2) Rear setback**

The applicant has converted the existing house and appears to have done several after-the-fact additions and is now seeking approval for the three-apartments; however, the development does not meet the required rear setback, existing at 4'.3" vs 20'; therefore, the applicant is seeking the setback variance from the authority for this high density zone.

## **2.10 CHRIS LAWSON (Tropical Architectural Group Ltd.) Block 4B Parcels 109, 110, 111, 112, 113, 114, 768, 767, and 764 (P20-0243)**

Application for 16-row land strata subdivision.

*This application is in conjunction with items 2.11 and 2.12*

### **FACTS**

<i>Location</i>	Allamanda Drive
<i>Zoning</i>	<b>HDR</b>
<i>Notice requirements</i>	No Objections
<i>Parcel size</i>	02.2067AC
<i>Proposed use</i>	Residential



## **BACKGROUND**

September 30, 2020 (CPA/16/20; item 2.11) – The application was adjourned for the following reason:

- 1) The applicant is required to submit a revised plan showing a turnaround at the end of the subdivision road.

**Recommendation:** Discuss the application, **for the following reasons:**

- 1) Revised plan showing half-hammerhead turnaround
- 2) Lot size and lot width

## **AGENCY COMMENTS**

Comments from the Water Authority, Fire Services, and National Roads Authority are noted below.

### **Water Authority**

*Please be advised that the Water Authority's requirements for this development are as follows:*

#### **Water Supply:**

*Please be advised that the proposed development site is located within the Cayman Water Company's (CWC) water supply area.*

- *The developer is required to notify the Cayman Water Company without delay, to be advised of the site-specific requirements for connection.*
- *The developer shall provide water supply infrastructure per CWC's specification and under CWC's supervision.*

#### **Wastewater Treatment:**

*Please be advised that the Water Authority's wastewater treatment requirements for the proposed development are detailed within a Memorandum submitted under a separate planning application P19-1401.*

### **Fire Services**

*If future development - a fire hydrant shall be provided for buildings to meet the necessary fire flow requirement.*

### **National Roads Authority**

The NRA has not submitted their comments which were due on 5<sup>th</sup> August.

## **APPLICANT'S LETTER**

*Further to the application submitted in relation to the above referenced Project, we hereby request for a lot size variance which requires a minimum of 5,000 sq ft per Planning Regulation 9(6)(d); lot width variance which requires a minimum of 60 ft per Planning Regulation 9(6)(f); setback variance which requires a minimum of 20 ft front setback per Planning Regulation 9 (6)(h).*

*We would appreciate your consideration for this variance request on the following basis:*

*Under Regulation 8 (13)(b), the characteristics of the proposed development are consistent with the character of surrounding area and the proposal will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighborhood, or to the public welfare. We'd like to present the following points for consideration:*

*The area of the site is approximately 99,751 sq ft (2.29 acres) which can fit up to 19 houses or 57 apartment units. The proposed phase 1 development only consists of (7) single storey houses.*

*However, due to odd shape of the lot, some of the proposed lot subdivisions are under the required 5,000 sq ft lot size and 60 ft minimum lot width. We would like to request for the consideration of the following:*

- Proposed House #1 – 49'-4" (lot width)*
- Proposed House #2 – 49'-2" (lot width)*
- Proposed House #3 – 49'-2" (lot width)*
- Proposed House #4 – 49'-2" (lot width)*
- Proposed House #5 – 49'-2" (lot width); 4,895 sq ft (lot size)*
- Proposed House #6 – 49'-2" (lot width); 4,749 sq ft (lot size)*
- Proposed House #7 – 55'-11" (lot width)*

*Even though some of the lots are undersized, the proposed house on each lot are well within the setback line, only the septic tanks are beyond the front setback line for the ease of maintenance.*

*Lastly, the proposed concrete driveway is 30' wide and similar developments with a much narrower driveway was previously approved without the turnaround at the end of the road (LIV Development – Montage). We hope that the CPA board would find these to be acceptable.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for 16-row land strata subdivision at the above-captioned properties. The site is located on Allamanda Drive, West Bay.

### **Zoning**

The property is zoned High Density Residential.

### **Specific Issues**

#### **1) Lot Size**

The required lot size in the HDR zone is 5,000-sq ft in accordance with regulation 9(6)(d) of the Development and Planning Regulation (2020 Revision). Five of the proposed lots (H5, H6, H8-H10) fall below this requirement with lot sizes ranging from 4,686 sq ft to 4,918 sq ft. The Authority should determine if the applicant has demonstrated that there is sufficient reason and exceptional circumstance to warrant allowing the lesser lot sizes.

#### **2) Lot Width**

The required lot width in the HDR zone is 60-ft in accordance with regulation 9(6)(f) of the Development and Planning Regulation (2020 Revision). In this instance, all of the lots, except H8, fall short of the minimum requirement with lot widths ranging from 47' to 55'. The Authority should determine if the applicant has demonstrated that there is sufficient reason and exceptional circumstance to warrant allowing the lesser lot widths.

## **SUPPLEMENTARY ANALYSIS**

On November 7, 2023, the applicant's agent submitted a revised subdivision plan showing the turnaround as requested by the Authority. The original Planning Officer for the file has left employment with the Department when the revised plan was submitted and it only recently came to the Department's attention. The Authority needs to determine if the turnaround is acceptable.

Further, as noted above in the Department's report, there are a few lots that fall below the required 5,000 sq ft lot size and one lot falls below the required lot width. At CPA/16/20, the Authority did not express any concerns with the lot sizes or widths and did not require revisions to the plan in regard to these matters.

#### **2.11 CHRIS LAWSON (Tropical Architectural Group Ltd.) (Block 4B Parcels 109, 110, 111, 112, 113, 114, 768, 767, and 764 (P19-1401) (\$994,000)**

Application for 7-dwelling houses.

*This application is in conjunction with items 2.10 and 2.12*

### **FACTS**

*Location*

Allamanda Drive, West Bay

<i>Zoning</i>	<b>HDR</b>
<i>Notice requirements</i>	No Objectors
<i>Parcel size proposed</i>	2.3584AC
<i>Proposed use</i>	Same as above
<i>Building size</i>	7,952-sq. ft.
<i>Footprint</i>	7,952-sq. ft.
<i>Site coverage</i>	7.7%

### **BACKGROUND**

September 30, 2020 (CPA/16/20; item 2.12) - It was resolved to adjourn the application for the following reason:

- 1) The applicant is required to submit revised building elevations that are noticeably more residential in character and appearance.

**Recommendation:** Discuss the application for the following reasons:

- 1) Visual appearance
- 2) Lot size and lot width
- 3) Septic tank setbacks

### **AGENCY COMMENTS**

Comments from the National Roads Authority and Water Authority are noted below.

#### **National Roads Authority**

*As per your memo dated January 29<sup>th</sup>, 2020 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

#### **Road Capacity Issues**

*The traffic demand to be generated by a residential development of a Seven (7) single-family units has been assessed in accordance with ITE Code 210. Thus, the assumed average trip rates per dwelling unit provided by ITE for estimating the daily, AM and PM peak hour trips are 9.57, 0.75 and 1.01 respectively. The anticipated traffic to be added onto Finch Drive is as follows:*

<b><i>Expected Daily Trip</i></b>	<b><i>AM Peak Hour Total Traffic</i></b>	<b><i>AM Peak 16% In</i></b>	<b><i>AM Peak 84% Out</i></b>	<b><i>PM Peak Hour Total Traffic</i></b>	<b><i>PM Peak 67% In</i></b>	<b><i>PM Peak 33% Out</i></b>
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<b>67</b>	<b>5</b>	<b>1</b>	<b>4</b>	<b>7</b>	<b>4</b>	<b>3</b>
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*Based on these estimates, the impact of the proposed development onto Finch Drive is considered to be minimal.*

#### ***Access and Traffic Management Issues***

*Entrance and exit curves shall have no less than fifteen (15) feet radius curves, and have a width of twenty-two (22) ft.*

*A six (6) foot sidewalk shall be constructed on Finch Drive, within the property boundary, to NRA standards.*

*Tire stops (if used) shall be place in parking spaces such that the length of the parking space is not reduced below the sixteen (16) feet minimum.*

#### ***Stormwater Management Issues***

*The applicant is encouraged to implement state-of-the-art techniques that manage stormwater runoff **within the subject parcel** and retain existing drainage characteristics of the site as much as is feasible through innovative design and use of alternative construction techniques. However, it is critical that the development be designed so that post-development stormwater runoff is **no worse than** pre-development runoff. To that effect, the following requirements should be observed:*

- *The applicant shall demonstrate, prior to the issuance of any Building Permits, that the Stormwater Management system is designed to embrace storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and ensure that surrounding properties and/or nearby roads are not subject to stormwater runoff from the subject site.*
- *The stormwater management plan shall include spot levels (existing and finished levels) with details of the overall runoff scheme. Please have applicant provide this information prior to the issuance of a building permit.*
- *Construct a gentle ‘hump’ at the entrance/exit (along the entire width of each driveway) in order to prevent stormwater runoff from and onto Finch Drive. Suggested dimensions of the ‘hump’ would be a width of 6 feet and a height of 2-4 inches. Trench drains often are not desirable.*
- *Curbing is required for the parking areas to control stormwater runoff.*
- *Roof water runoff should not drain freely over the parking area or onto surrounding property. Note that unconnected downspouts are not acceptable. We recommend piped connection to catch basins or alternative stormwater detention devices. If catch basins are to be networked, please have applicant to provide locations of such wells along with details of depth and diameter prior to the issuance of any Building Permits.*

*At the inspection stage for obtaining a Certificate of Occupancy, the applicant shall demonstrate that the installed system will perform to the standard given. The National Roads Authority wishes to bring to the attention of the Planning Department that non-compliance with the above-noted stormwater requirements would cause a road encroachment under Section 16 (g) of The Roads (Amendment) Law, 2004 (Law 11 of 2004). For the purpose of this Law, Section 16(g) defines encroachment on a road as*



*"any artificial canal, conduit, pipe or raised structure from which any water or other liquid escapes on to any road which would not but for the existence of such canal, conduit, pipe or raised structure have done so, whether or not such canal, conduit, pipe or raised structure adjoins the said road;"*

*Failure in meeting these requirements will require immediate remedial measures from the applicant.*

### **Water Authority**

*Please be advised that the Water Authority's requirements for the proposed development are based on the above block and parcels being combined. The Water Authority's requirements are as follows:*

### **Wastewater Treatment and Disposal**

***The developer, or their agent, is required to submit an Onsite Wastewater Treatment Proposal, per the attached Form, which meets the following requirements. Water Authority review and approval of the proposed system is a condition for obtaining a Building Permit.***

- The proposed development requires Aerobic Treatment Unit(s) with NSF/ANSI Standard 40 (or equivalent) certification that, when operated and maintained per manufacturer's guidelines, the system achieves effluent quality of 30 mg/L Biochemical Oxygen Demand and 30 mg/L Total Suspended Solids. The proposed system shall have a treatment capacity of at least 2,100 US gallons per day (gpd), based on the following calculations.***

<b>BUILDINGS</b>	<b>UNITS</b>	<b>GPD/UNIT</b>	<b>GPD/BLDG</b>	<b>GPD</b>
Houses 1-7	7 x 3-Bed Houses	300	300	2,100
<b>TOTAL</b>				<b>2,100</b>

- Treated effluent from the ATU shall discharge to an effluent disposal well constructed by a licenced driller in strict accordance with the Authority's standards. Licenced drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.***
- To achieve gravity flow, treated effluent from the ATU must enter the disposal well at a minimum invert level of 4'8" above MSL. The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well, which fluctuates with tides and perching of non-saline effluent over saline groundwater.***

### **Water Supply:**

*Please be advised that the proposed development site is located within the Cayman Water Company's (CWC) piped water supply area.*

- The developer is required to notify the Cayman Water Company without delay, to be advised of the site-specific requirements for connection.*
- The developer shall provide water supply infrastructure per CWC's specification and under CWC's supervision.*

## **APPLICANT'S LETTER**

*Further to the application submitted in relation to the above referenced Project, we hereby request for a lot size variance which requires a minimum of 5,000 sq ft per Planning Regulation 9(6)(d); lot width variance which requires a minimum of 60 ft per Planning Regulation 9(6)(f); setback variance which requires a minimum of 20 ft front setback per Planning Regulation 9 (6)(h).*

*We would appreciate your consideration for this variance request on the following basis:*

*Under Regulation 8 (13)(b), the characteristics of the proposed development are consistent with the character of surrounding area and the proposal will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighborhood, or to the public welfare. We'd like to present the following points for consideration:*

*The area of the site is approximately 99,751 sq ft (2.29 acres) which can fit up to 19 houses or 57 apartment units. The proposed phase 1 development only consists of (7) single storey houses.*

*However, due to odd shape of the lot, some of the proposed lot subdivisions are under the required 5,000 sq ft lot size and 60 ft minimum lot width. We would like to request for the consideration of the following:*

- Proposed House #1 – 49'-4" (lot width)*
- Proposed House #2 – 49'-2" (lot width)*
- Proposed House #3 – 49'-2" (lot width)*
- Proposed House #4 – 49'-2" (lot width)*
- Proposed House #5 – 49'-2" (lot width); 4,895 sq ft (lot size)*
- Proposed House #6 – 49'-2" (lot width); 4,749 sq ft (lot size)*
- Proposed House #7 – 55'-11" (lot width)*

*Even though some of the lots are undersized, the proposed house on each lot are well within the setback line, only the septic tanks are beyond the front setback line for the ease of maintenance.*

*Lastly, the proposed concrete driveway is 30' wide and similar developments with a much narrower driveway was previously approved without the turnaround at the end of the road*

*(LIV Development – Montage). We hope that the CPA board would find these to be acceptable.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for 7-dwelling houses at the above-captioned properties (H1 to H7 from item 2.21). The site is located on Allamanda Drive, West Bay.

### **Zoning**

The property is zoned High Density Residential.

### **Specific Issues**

#### **a) Lot size and lot width**

As noted under item 2.21, 5 of the land strata lots fall short of the minimum lot size requirement of 5,000 sq ft. and all but one lot falls short of the minimum lot width requirement of 60'. In this instance, two of the houses are proposed on undersized lots (H5 and H6) and all seven houses are on lots with deficient lot widths. The Authority's consideration of the lot sizes and lot widths in the associated lot land strata subdivision will determine the outcome for these house applications.

#### **b) Septic tank setbacks**

As indicated on the site plan, the septic tanks have front setbacks between 12'-2" to 12'-6", whereas the minimum requirement is 20' per Regulation 9(6)(h) of the Development and Planning Regulation (2020 Revision). The Authority should determine if the applicant has demonstrated that there is sufficient reason and exceptional circumstance to warrant allowing the lesser setbacks.

## **SUPPLEMENTARY ANALYSIS**

As noted in the Background, the CPA on September 30, 2020 determined that the visual appearance of the building needed to be improved to appear more residential in nature. The applicant has made no changes to the plans presented on September 30, 2020 and the Authority is requested to revisit to the issue of the design of the houses.

Further, at CPA/16/20, the Authority did not express any concerns with the lot sizes or widths and did not require revisions to the plan in regard to these matters.

### **2.12 CHRIS LAWSON (Tropical Architectural Group Ltd.) Block 4B Parcels 109, 110, 111, 112, 113, 114, 768, 767, and 764 (P20-0252) (\$30,000)**

Application for 5' perimeter concrete wall with subdivision gate and proposed sign attached on a decorative wall (40-sq ft)

*This application is in conjunction with items 2.10 and 2.11*

### **FACTS**

*Location* Allamanda Drive

*Zoning* **HDR**

<i>Notice requirements</i>	No Objectors
<i>Parcel size</i>	2.2067AC
<i>Proposed use</i>	Same as above

**Recommendation:** The Authority's determination of items 2.10 and 2.11 will determine the outcome of these applications.

### **AGENCY COMMENTS**

Comments from the National Roads Authority are noted below.

#### **National Roads Authority**

No comments from the NRA received.

### **PLANNING DEPARTMENT ANALYSIS**

#### **General**

The application is for 5' perimeter concrete wall with subdivision gate and proposed sign attached on a decorative wall (40-sq ft) at the above-captioned properties. The site is located on Allamanda Drive, West Bay.

#### **Zoning**

The property is zoned High Density Residential.

#### **Specific Issues**

##### **1) Sign attached to Fence**

The sign would be affixed to a decorative wall at the entrance gates. The lettering of the sign is approx. 9-sq ft - the decorative wall for the sign is 40-sq ft.

##### **2) Fence Setback**

As indicated on the site plan, the applicant is seeking planning permission for a 5' concrete block fence. The CPA recently granted planning permission 5' wall to be setback a 2-ft from Canal Point Drive.

### **SUPPLEMENTARY ANALYSIS**

At CPA/16/20, the Authority expressed no concerns with the wall and sign and requested no changes to be made to the plans.

#### **2.13 GREEN TEA LIMITED (John Doak Architecture) Block 15D Parcel 168 (P23-0485) (\$50,000) (EJ)**

Application for an after-the-fact addition to a cabana & proposed modification to house.

#### **FACTS**

*Location* South Sound Road

<i>Zoning</i>	<b>BRR, NCC Overlay</b>
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.95 ac. (41,382 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	House & Ancillary Structures
<i>Proposed building size</i>	833 sq. ft.
<i>Total building site coverage</i>	12.4%

## **BACKGROUND**

July 11, 2014 – The Department granted permission for a 403 sq. ft. addition to house (P14-0581).

August 8, 2022 – The Department granted permission for a 24Kw generator and 100-gallon lpg tank (P22-0255).

May 5, 2023 – The Department issues and enforcement notice (CE23-0053).

August 30, 2023 (**CPA/19/23; Item 2.16**) – The Authority adjourned the application in order to invite the applicant to appear and contact DOE as to why comments not consistent with other applications re: need for turtle friendly lighting.

December 13, 2023 (**CPA/30/23; Item 2.2**) – the Authority adjourn planning permission in order to refer the application to the NCC pursuant to Section 41(4).

**Recommendation:** Discuss the application, **for the following reasons:**

- 1) Sides setback variance (10'.0" vs 15')
- 2) NCC 41(5) response

## **AGENCY COMMENTS**

Comments from the Department of Environment are noted below.

### **Department of Environment (July 26, 2023)**

*This review is provided by the Director of the Department of Environment (DoE) under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*

#### ***Site Overview***

*The site of the proposed development is a turtle nesting beach and is adjacent to a Marine Reserve (a Marine Protected Area under the National Conservation Act).*

#### ***Impacts on the Marine Protected Area***



*As the application site is adjacent to a Marine Reserve, a Protected Area under the National Conservation Act, best management practices must be implemented to avoid, minimise and mitigate impacts on the Marine Protected Area. In particular, construction-related debris must not enter the marine environment. Poor construction management practices can degrade the environment by:*

- *Washing stockpiled aggregates, loose material or bulk material into the marine environment, causing turbidity and impacting water quality; and*
- *Polluting the marine environment with wind-borne debris. Practices such as sanding down ('keying') polystyrene, Styrofoam or insulating concrete forms (ICFs) which are used as part of wall finishing and window moulding can result in polystyrene waste materials getting blown into the sea in significant quantities.*

*The Department has witnessed and experienced complaints from members of the public regarding pollution from expanded polystyrene (EPS) beads on construction sites around the island. EPS is used in a variety of applications, including thermal insulation in buildings, civil engineering applications and decorative mouldings and panels. During construction, once EPS is cut, tiny microbeads are blown into the air, polluting neighbouring yards, stormwater drains, and nearby water bodies. Polystyrene is not biodegradable, and the EPS beads can be consumed by wildlife when it enters the food chain. EPS beads that make their way to the sea can be mistaken by fish and birds as fish eggs and have the potential to cause blockages in their digestive systems. These beads are very difficult to remove once they enter the water and they do not naturally break down.*

### ***Impacts on Turtle Nesting***

*All marine turtle species are listed in Part 1 of Schedule 1 of the National Conservation Act, 2013, as being 'protected at all times'.*

*The main threats to sea turtles from development are:*

- *Construction on the beach directly or indirectly impacting mature and hatchling sea turtles,*
- *Development on the beach directly removing nesting areas and indirectly impacting the nesting habitat through modification and degradation of the natural beach,*
- *Artificial lighting causing mature females to be deterred from nesting and hatchling turtles to crawl away from the sea, where they die from dehydration, exhaustion, predators or vehicles, and*
- *Loss of coastal vegetation.*

### ***Construction Impacts on Turtle Nesting***

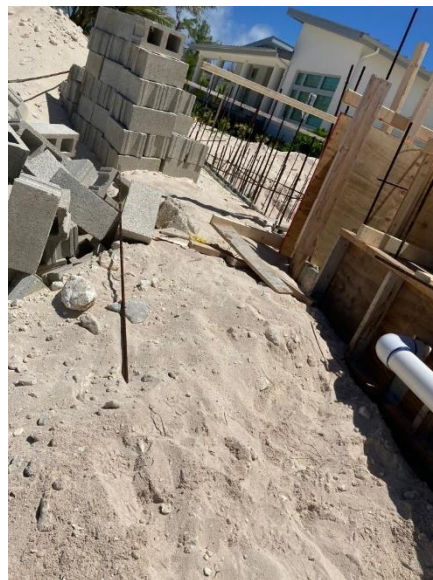
*Operating heavy machinery during land clearing and construction presents a threat to nesting sea turtles. Construction works not only disturb the physical nesting habitat but heavy machinery and associated works can crush or bury baby sea turtles and turtle nests.*

*The excavation of the foundations will likely result in a large quantity of sand. The sand is a key component of what makes the application site good for sea turtles. We recommend that any excavated sand is retained on-site.*

*Nesting sea turtles often use vegetation as a cue for nesting, and will crawl landwards up the beach until they reach the vegetation, or on a modified beach, a hard structure. When the vegetation is removed for construction, sea turtles can enter construction sites and be harmed. Figures 3 and 4 below show sea turtle tracks directly up to construction sites. The DoE has also been called to respond numerous times to sea turtles who have become trapped in construction sites. Figure 5 shows a sea turtle hatchling which was killed due to heavy equipment being operated on the beach.*



*Figures 1 & 2: Sea turtle tracks showing that the sea turtle has crawled up the beach until it reached a construction site (Source: DoE and Tammy Kelderman, 2021). The fence pictured is dangerous to sea turtles as it is sharp, rusty and not secure.*



Figures 3 & 4: DoE photo showing turtle tracks within a construction site on a turtle nesting beach. This site did not have temporary beachside construction fencing to prevent turtles from entering the site. The turtle could have or may have been injured by construction materials and debris on-site (Source: DoE, 2023).



Figure 5: A dead sea turtle hatchling, which was killed by heavy equipment operating on the beach (Source: DoE, 2022).

For these reasons, construction fencing suitable for excluding turtles must be installed prior to the commencement of demolition and/or site works. Mesh fencing, Heras fencing, and chainlink fencing are all unacceptable as they can be dangerous to turtles and do not exclude them from the site. Mature green sea turtles weigh around 300 to 400 lbs and are capable and strong diggers.

Temporary beachside construction fencing must be:

- Located as far landward as possible to leave room/habitat for the turtles to nest during the work;
- Made from a sturdy/solid material like plywood with no gaps (i.e. not chainlink fencing or the orange plastic fencing with holes as hatchlings can crawl through these and adults can knock it down or become tangled);
- Embedded at least 2 feet into the sand so that turtles cannot dig it out or crawl under;
- Installed in a manner that any nailing of the wood will be done so that the sharp ends are located on the landside of the fencing to prevent injury to turtles;
- Suitable to contain all excavated material, construction materials and demolition waste landward of the fencing; and
- Installed so that it does not block public access along the foreshore and not installed along or seaward of the Mean High Water Mark.





Figure 6: An example of suitable construction fencing to protect turtles (Source: DoE, 2022).

### ***Impacts of Artificial Lighting on Turtle Nesting***

*Artificial lighting on and around turtle nesting beaches is one of the greatest threats to the survival of Cayman's endangered sea turtle nesting populations. Bright lights on or near the beach can deter female turtles from nesting and cause baby turtles to crawl away from the sea, where they die from dehydration, exhaustion, predators or vehicles.*

*Turtle friendly lighting has been a legal requirement in ordinances in the United States for over 30 years. It is a proven solution to prevent the misorientation of sea turtles whilst safely and effectively lighting beachside properties. Figures 7-9 show examples of properties in Grand Cayman that have turtle friendly lighting installed. Artificial lighting from the proposed property would have the potential to impact the turtle nesting beach therefore, the submission of a turtle friendly lighting plan will be required to minimise the impacts of artificial lighting.*



Figures 7-9: Properties retrofitted to turtle friendly lighting along Seven Mile Beach, Grand Cayman.

### **DOE RECOMMENDATIONS**

*If the Central Planning Authority or Planning Department is minded to approve this development, the following conditions should be included in any grant of planning permission:*

1. *No lighting which forms a part of the proposed works shall directly, indirectly or cumulatively light the turtle nesting beach. If the proposed works include lighting, prior to the issuance of a Building Permit, the applicant shall prepare and submit a plan for review and approval to the Department of Environment for turtle friendly lighting, which minimises the impacts on sea turtles. Guidance on developing a lighting plan can be found in the Department of Environment's Turtle Friendly Lighting: Technical Advice Note (September 2018) available at <https://doe.ky/marine/turtles/tfl/>. The DoE's written approval must be received by the Planning Department prior to the issuance of the Building Permit.*
2. *No construction work, vehicle access, storage of equipment/materials or other operations should take place on the beach during turtle nesting season (1st May – 30th November yearly) without the express consent of the DoE.*
3. *Prior to the commencement of works, the property owner shall contact the DoE to check for the presence of turtle nests; written approval shall be obtained from the DoE that no nests will be impacted by the commencement of works.*
4. *Prior to the commencement of works, temporary beachside construction fencing associated with the works shall be positioned as far landward as possible to maximise turtle nesting habitat. Where no hard structure forms a barrier the fencing shall be positioned a minimum of 75ft from the Mean High Water Mark. The fencing shall be erected so that it fully encloses the beach-facing area of works and is embedded at least 2 feet into the beach profile to prevent turtles entering the construction site or digging under the fencing, during nesting season.*
5. *Lighting and specifications for visible light transmittance shall be installed and maintained in accordance with the turtle friendly lighting plan which has been reviewed and approved by the Department of Environment. The DoE will inspect the exterior lighting and specifications for visible light transmittance for compliance with the approved turtle friendly lighting plan once construction and the installation of the fixtures are complete. Confirmation of the Department of Environment's written approval of the installed exterior lighting after the inspection must be received by the Planning Department prior to the issuance of the Certificate of Occupancy.*
6. *Should there be any sand excavated during construction, beach-quality sand shall be retained on-site and placed along the active beach profile. If sand is to be placed on the beach during turtle nesting season (1<sup>st</sup> May – 30<sup>th</sup> November yearly), the express consent of the DoE is required to ensure that turtle nests are not adversely impacted.*
7. *If there is an excessive quantity of sand that cannot be accommodated on-site, and the applicant would like to move such sand off-site, it should be the subject of a separate consultation with the National Conservation Council.*

### **DIRECTED CONDITIONS**

*The site is adjacent to a Marine Protected Area under the NCA. Without appropriate environmental management practices, storage of materials too close to the protected area and inadequate management of construction wastes and debris can result in adverse effects*

*on that protected area through the run-off and escape of materials and debris. Storms, high waves, high tides, rainy weather, or construction practices can result in the material entering the Marine Protected Area.*

*Without appropriate environmental management practices during construction, there would or would be likely to be an adverse effect on the Marine Protected Area, namely:*

- Section 2(f) of the NCA: the discharge of pathogens, dissolved or suspended minerals or solids, waste materials or other substances at levels that may be harmful to wildlife or the ecological or aesthetic value of the area.*

*On the basis of the above information, in the exercise of powers which have been conferred through express delegation by the National Conservation Council, pursuant to section 3(13) of the National Conservation Act (2013) the Director of DoE, therefore, **respectfully directs that the following conditions be imposed by the Central Planning Authority or Department of Planning**, as part of any agreed proposed action for planning approval:*

- 1. All construction materials and debris shall be stockpiled at least 75 ft from the Mean High Water Mark to prevent material from entering the Marine Protected Area. If beachside construction fencing is required or will be installed, all construction materials, fill, sand, equipment and/or debris shall be stockpiled landward of the beachside construction fencing.*
- 2. Prior to undertaking any sanding or breaking down of polystyrene as part of the construction process, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas or pollute the adjacent Marine Protected Area offshore.*

*These conditions are directed to prevent run-off and debris from entering the Marine Protected Area causing turbidity and impacting sensitive marine resources.*

*A person aggrieved by a decision of the National Conservation Council to impose a condition of approval may, within 21 days of the date on which the decision is received from the Central Planning Authority/Department of Planning, appeal against the decision of the Council to the Cabinet by serving on the Cabinet notice in writing of the intention to appeal and the grounds of the appeal (Section 39 of the National Conservation Act, 2013). We trust that this information will be relayed to the applicant in the Department of Planning's decision letter.*

## **APPLICANT'S LETTER**

*In response to the below notification from the Planning Department we write on behalf of Green Tea Limited to seek a variance for the side setback for the extension to an existing cabana at 15D168, noting as follows:*

- The Woodford residence was originally approved by the Central Planning Authority in 2002 (see file F02-0255) and has since been modified for various extensions and modifications approved in 2004, 2010, 2014.*



- *The existing poolside cabana was included in earlier submissions along with the swimming pool.*
- *The existing cabana for which we seek approval to extend in length, sits within the 20ft setback required in BRR zones, noting that consent for the current setback of the cabana was granted permission in an earlier submission to the CPA.*
- *The application is for a single-family residence in a Beach Resort Residential zoned property where the CPA has approved 15ft setbacks being acceptable for single family homes, likewise that road setbacks would be 20ft.*
- *At this time we seek the CPA's consent to extend the cabana as shown and located in the drawings.*

*The planner has asked for the Applicant to consider the below referred clause 8(13) in the Planning Laws and we respond as follows:*

*13) Notwithstanding subregulations (1), (2), (5), (7) and (9) and regulations 9(6), (7) and (8), 10, 12, 13, 14, 15, 23, 26 and 27, the Authority may grant planning permission to carry out development that does not comply with all or any of those provisions, with the exception of the number of permitted storeys in subregulation (2), if the Authority is satisfied that —*

- (a) the development is a government-approved low-cost housing programme; **this application is not a low cost housing programme***
- (b) there is sufficient reason to grant a variance and an exceptional circumstance exists, which may include the fact that*
- (i) the characteristics of the proposed development are consistent with the character of the surrounding area; **the variance request is for an existing structure previously approved to be built***
- (ii) unusual terrain characteristics limit the site's development potential; **there are no characteristics that limit the extension of the existing cabana***  
*or*
- (iii) the proposal will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighbourhood, or to the public welfare; **the proposed extension of the cabana will not be materially detrimental***  
*or*
- (c) the development is a planned area development pursuant to regulation 24 (1), **the application is not a PAD proposal** and, in the case of an application where lesser setbacks are proposed for a development or a lesser lot size is proposed for a development, the Authority shall in addition be satisfied that the adjoining property owners have been notified of the application. **The adjacent property owners have been notified via Section 15(4) notice.***

*The Applicant requests the CPA's favourable review of the above noted variance requests.*

## **PLANNING DEPARTMENT ANALYSIS**

## **General**

The after-the-fact cabana extension and veranda to the existing house is located on South Sound Road and the results of code enforcement CE23-0053.

## **Zoning**

The property is zoned Beach Resort Residential.

## **Specific Issues**

### **1) Minimum Side Setbacks – 15'.0" vs 20'**

The after-the-fact cabana addition existed at 15' vs 20' which does not meet the Regulations 15 (4)(b)(i); therefore, the applicant is seeking side setback for cabana addition, bearing in mind the original portion cabana exists at 10' from the side boundary.



Photos courtesy of CE23-0053.

Additionally, the proposed plan seeks to extend the seawall 5-ft to make it aligned squarely with the existing wall, nevertheless meeting the requirements proposed at 89'.10" vs 75' as required under regulations 8 (10)(f).

The applicant is also seeking an after-the-fact roof lanai and modification to floor area, however, the department has no concerns for this aspect of the application as the as it meets all planning regulations and is within the existing seawall.





Photos courtesy of CE23-0053.

### **SUPPLEMENTARY ANALYSIS**

On December 13, 2023 (**CPA/30/23; Item 2.2**) – the Authority adjourn planning permission in order to refer the application to the NCC pursuant to Section 41(4).

#### **Department of Environment (January 16, 2024)**

*On 9 January 2024, the Department of Environment (DoE), under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013 (NCA)), received a request for approval under Section 41(4) of the NCA from the Planning Department/Central Planning Authority prior to the granting of planning permission for the aforementioned project.*

*We have reviewed the minutes of the Central Planning Authority meeting on 13 December 2023 for this application. In our Section 41(3) consultation review, we included recommendations around turtle friendly lighting. Since the beach at the site is not designated Critical Habitat for sea turtles, they are recommendations for the Central Planning Authority to consider and decide whether to adopt. We believe it is worthwhile to include turtle friendly lighting even though the nesting has historically been low on this site. We have prepared a more detailed memorandum explaining the designations separately.*

*On 9 January 2024, we visited the site at the request of the Applicant. Based on the stage of the works, as observed by the CPA and noted in the minutes, some of the recommended conditions are no longer as relevant and so we have revised our recommendations below.*

*Lastly, there was a question from the CPA recorded in the minutes regarding whether we require the entire existing property to be changed to turtle friendly lighting when considering an addition/modification. We do not require existing lighting to be converted because we consider it outside of the scope of the application under consideration. However, we are always open to discussions with property owners if they wish to retrofit existing lighting to achieve a uniform look or to make their property safe for turtles.*

*If the Central Planning Authority or Planning Department is minded to approve this development, we recommend that the following conditions are included in any grant of planning permission:*

1. *No lighting which forms a part of the proposed works shall directly, indirectly or cumulatively light the turtle nesting beach. If the proposed works include lighting, prior to the issuance of a Building Permit, the applicant shall prepare and submit a plan for review and approval to the Department of Environment for turtle friendly lighting, which minimises the impacts on sea turtles. Guidance on developing a lighting plan can be found in the Department of Environment's Turtle Friendly Lighting: Technical Advice Note (September 2018) available at <https://doe.ky/marine/turtles/tfl/>. The DoE's written approval must be received by the Planning Department prior to the issuance of the Building Permit.*
2. *No construction work, vehicle access, storage of equipment/materials or other operations should take place on the beach during turtle nesting season (1st May – 30th November yearly) without the express consent of the DoE.*
3. *Lighting and specifications for visible light transmittance shall be installed and maintained in accordance with the turtle friendly lighting plan which has been reviewed and approved by the Department of Environment. The DoE will inspect the exterior lighting and specifications for visible light transmittance for compliance with the approved turtle friendly lighting plan once construction and the installation of the fixtures are complete. Confirmation of the Department of Environment's written approval of the installed exterior lighting after the inspection must be received by the Planning Department prior to the issuance of the Certificate of Completion.*

*Noting that the site is adjacent to a Marine Protected Area and the remaining works may adversely impact that Protected Area, under Section 41(5) of the NCA, in the exercise of powers which have been conferred through express delegation by the National Conservation Council, pursuant to section 3(13) of the National Conservation Act (2013) the Director of DoE, therefore, respectfully directs that the following conditions be imposed by the Central Planning Authority or Department of Planning, as part of any agreed proposed action for planning approval:*

- *All construction materials and debris shall be stockpiled at least 75 feet from the Mean High Water Mark to prevent material from entering the Marine Protected Area.*
- *Prior to undertaking any sanding or breaking down of polystyrene as part of the construction process, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas or pollute the adjacent Marine Protected Area.*

*These conditions are directed to prevent run-off and debris from entering the Marine Protected Area causing turbidity and impacting sensitive marine resources.*

*A person aggrieved by a decision of the National Conservation Council to impose a condition of approval may, within 21 days of the date on which the decision is received from the Central Planning Authority/Department of Planning, appeal against the decision of the Council to the Cabinet by serving on the Cabinet notice in writing of the intention to appeal and the grounds of the appeal (Section 39 of the National Conservation Act, 2013). We trust that this information will be relayed to the applicant in the Department of Planning's decision letter.*

**2.14 CHRISTOPHER & ELIZABETH STRINGER (Johnson Design) Block 57A Parcel 28 (P23-0561 + P23-0122) (\$950,150) (EJ)**

Application for addition to house and swimming pool, 6' wood fence and gates and after-the-fact post and rope fence.

**FACTS**

<i>Location</i>	Old Robin Road, North Side
<i>Zoning</i>	<b>BRR</b>
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	1.29 ac. (56,192 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	House
<i>Proposed building size</i>	1,737 sq. ft.
<i>Total building site coverage</i>	6.99%

**BACKGROUND**

House has existed since at least 1971, but there are no historic records

January 30, 2023 (**CPA/01/24; Item 2.14**) - The Authority adjourned the application in order to invite the applicant to submit a written response to NCA Sec 2.

**Recommendation:** Discuss the application, **for the following reasons:**

- 1) HWM setback variances
- 2) Side setback variance
- 3) Applicant's NCA 2(a-l) responses

**AGENCY COMMENTS**

Comments from the Department of Environment and National Roads Authority are noted below.

**Department of Environment (April 11, 2023) (Fence)**

*This review is provided by the Director of the Department of Environment (DoE) under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*

*The application site is man-modified. It is noted from the plans submitted and from a site visit undertaken on 11 April 2023 that the fence has already been constructed, giving limited opportunity for relevant agencies to provide useful feedback to the applicants. Since the fence has already been constructed and ties into an existing seawall, we have no comments at this time.*



**Department of Environment (December 8, 2023) (House, Pool & 6' Fence)**

*This review is provided by the Director of the Department of Environment (DoE) under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*

**Site Overview**

*The site is man-modified. It is located on a turtle nesting beach. The site is also adjacent to a No Dive Zone, a Marine Protected Area under the National Conservation Act (2013).*

**Advice to the Applicant**

*Coastal habitat incorporates a variety of salt and wind-tolerant flora. Native coastal vegetation is becoming rarer as development on the coast increases. Coastal shrubland is high in ecological value, providing a biodiverse habitat for native wildlife in addition to stabilising the shoreline and reducing erosion. Once vegetation has been cleared, it often results in wind-borne erosion of the land and general coastal erosion. Coastal vegetation is therefore important for the integrity of the beach to ensure there is an appropriate nesting habitat for sea turtles in this proposed critical location. Beach vegetation is also thought to play an important role in sea turtle nest site selection, hatch success, hatchling fitness, sex ratio, and their ability to find the sea.*

*The excavation of the pool will likely result in a large quantity of sand. The sand is a key component of what makes the application site good for sea turtles. We recommend that any excavated sand is retained on-site. We strongly urge the applicant to retain as much mature native vegetation as possible, particularly along the coastal frontage of the site. We also encourage the applicant to plant and incorporate native species in their landscaping scheme.*

**Advice to the Central Planning Authority**

*The existing house is positioned very close to the Mean High Water Mark. It appears to have been located close to the sea since it was constructed. After reviewing maps over time, it does not appear that there was significant erosion event.*

*The proposed pool has been positioned on the seaside of a building that is already very close to the sea and vulnerable to damage during storms and weather events. However, the site is very large and there appears to be ample space to place the pool and pavilion on the landward side of the building, while still maintaining privacy and a good setback from the road. Setting the pool on the landward side of the existing house would avoid harming the beach ridge.*

*The DoE does not support the granting of coastal variances. Adhering to the minimum setbacks from the coast is the most straightforward way to incorporate resilience into a coastal structure by providing a natural and regulatory-based defense against the impacts of storm surges, flooding, erosion and other environmental challenges. It can help to promote sustainable development and helps to ensure the long-term viability of structures in what would otherwise be vulnerable areas.*

*We strongly recommend that the Central Planning Authority does not grant the coastal variance, and requires the applicant to redesign their project to meet the minimum setbacks.*

*If the Central Planning Authority is minded to approve the proposed additions, the site is adjacent to a turtle nesting beach and the marine environment.*

*The main threats to sea turtles from development on turtle nesting beaches are:*

- Construction on the beach directly or indirectly impacting mature and hatchling sea turtles,*
- Development on the beach directly removing nesting areas from the critical habitat and indirectly impacting the critical habitat through modification and degradation of the natural beach,*
- Artificial lighting causing mature females to be deterred from nesting and hatchling turtles to crawl away from the sea, where they die from dehydration, exhaustion, predators or vehicles, and*
- Loss of coastal vegetation.*

#### *Construction Impacts*

*Operating heavy machinery during land clearing and construction presents a threat to nesting sea turtles. Construction works not only disturb the physical nesting habitat but heavy machinery and associated works can crush or bury baby sea turtles and turtle nests.*

*Nesting sea turtles often use vegetation as a cue for nesting, and will crawl landwards up the beach until they reach the vegetation, or on a modified beach, a hard structure. When the vegetation is removed for construction, sea turtles can enter construction sites and be harmed. Figures 1 and 2 below show sea turtle tracks directly up to construction sites. The DoE has also been called to respond numerous times to sea turtles who have become trapped in construction sites. Figures 3 and 4 show potential injuries from materials being stored on the beach, and Figure 5 shows a sea turtle hatchling which was killed due to heavy equipment being operated on the beach.*



*Figures 1-2: Sea turtle tracks showing that the sea turtle has crawled up the beach until it reached a construction site (Source: DoE and Tammy Kelderman, 2021). The fence in Figure 1 is dangerous to sea turtles as it is sharp, rusty and not secure.*



*Figures 3 & 4: DoE photos showing turtle tracks within a construction site on a turtle nesting beach. This site did not have temporary beachside construction fencing to prevent turtles from entering the site. The turtle could have or may have been injured by construction materials and debris on-site (Source: DoE, 2023).*



*Figure 5: A dead sea turtle hatchling, which was killed by heavy equipment operating on the beach (Source: DoE, 2022).*

*For these reasons, construction fencing suitable for excluding turtles must be installed prior to the commencement of demolition and/or site works. Mesh fencing, Heras fencing, and chain-link fencing are all **unacceptable** as they can be dangerous to turtles and do not exclude them from the site. Mature green sea turtles weigh around 300 to 400 lbs and are capable and strong diggers.*

*Temporary beachside construction fencing must be:*

- Located as far landward as possible to leave room/habitat for the turtles to nest during the work;*
- Made from a sturdy/solid material like plywood with no gaps (i.e. not chain-link fencing or the orange plastic fencing with holes as hatchlings can crawl through these and adults can knock it down or become tangled);*
- Embedded at least 2 feet into the sand so that turtles cannot dig it out or crawl under;*
- Installed in a manner that any nailing of the wood will be done so that the sharp ends are located on the landside of the fencing to prevent injury to turtles; and*
- Inspected by the DoE after installation and written approval shall be obtained from the DoE that the installed fence is suitable for the exclusion of turtles.*
- Suitable to contain all excavated material, construction materials and demolition waste landward of the fencing.*





*Figure 6: An example of suitable construction fencing to protect turtles (Source: DoE, 2022).*

### *Artificial Lighting*

*Artificial lighting on and around turtle nesting beaches is one of the greatest threats to the survival of Cayman's endangered sea turtle nesting populations. Bright lights on or near the beach can deter female turtles from nesting and cause baby turtles to crawl away from the sea, where they die from dehydration, exhaustion, predators or vehicles.*

*Turtle friendly lighting has been a legal requirement in ordinances in the United States for over 30 years. It is a proven solution to prevent the misorientation of sea turtles whilst safely and effectively lighting beachside properties. The Department strongly recommends the use of turtle friendly lighting on turtle nesting beaches. Figures 7-9 show examples of properties in Grand Cayman that have turtle friendly lighting installed.*



*Figures 7-9: Properties retrofitted to turtle friendly lighting along Seven Mile Beach, Grand Cayman (Source: DoE, various).*



*Best management practices should be adhered to during construction to reduce impacts on the environment, including impacts to water quality. Materials should be stockpiled away from the ironshore to avoid runoff into the ocean. Control measures should be put in place to address pollution from expanded polystyrene (EPS) beads on construction sites, for example those used in consumed by wildlife when it enters the food chain. These beads are very difficult to remove once they enter the environment and they do not naturally break down.*

*If the Central Planning Authority or Planning Department is minded to grant planning permission for the proposed development, we recommend the inclusion of the following conditions in the approval:*

- 1. If the construction uses insulating concrete forms (ICFs) or other polystyrene materials, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas or pollute the adjacent marine environment.*

#### *Prior to Any Site Works*

- 2. Prior to the commencement of any site works such as clearing, filling, grading and road construction, the property owner shall contact the Department of Environment to check for the presence of turtle nests; written approval shall be obtained from the Department of Environment that no nests will be impacted by the commencement of works.*

#### *Prior to the Issuance of a Building Permit*

- 3. Prior to the issuance of a Building Permit, the applicant shall prepare and submit a plan for review and approval to the Department of Environment for turtle friendly lighting, which minimises the impacts on sea turtles. Guidance on developing a lighting plan can be found in the Department of Environment's Turtle Friendly Lighting: Technical Advice Note (September 2018) available from <https://doe.ky/marine/turtles/tfl/>. The DoE's written approval must be received by the Planning Department prior to the issuance of the Building Permit.*
- 4. Prior to the installation of the beachside construction fencing and the commencement of construction works, the property owner shall contact the Department of Environment to check for the presence of turtle nests and to ensure that no nests will be impacted by the installation of the embedded fencing or the commencement of construction works. The Department of Environment's written approval must be received by the Planning Department prior to the issuance of the Building Permit.*

5. *Prior to the issuance of a Building Permit, beachside construction fencing associated with the works shall be installed and be positioned a minimum of 75 ft from the Mean High Water Mark. The fencing shall be erected so that it fully encloses the beach-facing area of works and is embedded at least 2 feet into the beach profile to prevent turtles from entering the construction site or digging under the fencing. The applicant shall liaise directly with the Department of Environment for requirements guidance regarding this fencing. The Department of Environment will inspect the fencing and confirmation of the Department of Environment's written approval must be received by the Planning Department prior to the issuance of the Building Permit.*

#### *During Construction*

6. *All construction materials including excavated materials and/or debris shall be stockpiled on the landward side of the construction fencing.*
7. *Any sand that is to be excavated during construction shall be retained on-site and beach-quality sand shall be placed along the active beach profile. Placement of the sand on the beach during turtle nesting season will require the written consent of the Department of Environment, to ensure that no nests will be impacted. If there is an excessive quantity of sand that cannot be accommodated on-site, and the applicant would like to move such sand offsite, it shall be the subject of a separate consultation with the National Conservation Council.*

#### *Prior to the Issuance of a Certificate of Occupancy*

8. *Lighting and/or specifications for visible light transmittance shall be installed and maintained in accordance with the turtle friendly lighting plan which has been reviewed and approved by the Department of Environment. Once construction is complete, prior to the issuance of the Certificate of Occupancy, the Department of Environment will inspect the installed lighting for compliance with the approved turtle friendly lighting plan. Confirmation of the Department of Environment's written approval of the installed exterior lighting after the inspection must be received by the Planning Department prior to the issuance of the Certificate of Occupancy.*

### **APPLICANT'S LETTER**

*Kindly accept this letter requesting a side setback variance for a proposed pavilion (16'vs.20') and a High Water Mark setback variance for a pool (44'vs.75').*

#### ***Proposed Pavilion Side Setback Variance***

*Located in a Beach Resort / Residential zone, the applicant proposes that the side setbacks be the same as those in a residential zone considering the project is a single-family residence. The proposed pavilion is one story and setback 16' instead of 20' from the side property boundary, within typical residential setbacks. Please consider Section 8(13)(b) of the Development and Planning Law and note (i) that this is consistent with other parcels with the same zoning where residential projects are being proposed and (ii) that this is not 'materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighbourhood, or to the public welfare'.*

### ***Proposed Pool HWM Setback Variance***

*When designing the house addition and pavilion it was important to not disrupt the existing Seagrape Trees on site, given their natural wealth. Working with a surveyor, the client and Architect were able to map and position the proposed structures on site to minimize tree removal. The proposed pool location (setback 44' from the High Water Mark) was determined in a similar manner and sits in front of a large grove of Seagrape trees so they can be retained. Please also consider that the pools are not habitable and given that the elevation is 11'ASL, only in a large storm surge equivalent to Hurricane Ivan, would the pool be compromised. As per Section 8(13)(b) of the Development and Planning Law please note (i) that this is consistent with other parcels within the vicinity who also have pools within the HWM setback and (ii) that this is not 'materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighbourhood, or to the public welfare'.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The proposed addition to house, swimming pool, six (6') wood fence and gates and after-the-post and rope fence is located on Old Robin Road, North Side.

### **Zoning**

The property is zoned Beach Resort Residential.

### **Specific Issues**

#### **1) High Water Mark setbacks**

The applicant is seeking a setback variance from the CPA for the proposed swimming pool (34'.6" vs 75') and (56'.9" vs 75') from the pavilion which goes against Regulation 8(2)(f). Additionally, the applicant is seeking after-the-fact permission for a wood-post and rope fence with a 0' HWM setback vs the required 75'.

## 2) Side setback

In addition to the HWM setback variances, the applicant is also seeking a right-side (East) setback variance, proposed at (15'.11" vs 20') from the pavilion and goes against Regulations 15(4)(b)(i).

### **SUPPLEMENTARY ANALYSIS**

January 30, 2023 (CPA/01/24; Item 2.14) - The Authority adjourned the application in order to invite the applicant to submit a written response to NCA Sec 2.

#### **Applicant's written response**

*Setback Variance for 57A 28 Planning Application for a Proposed House Addition and a Pool*

*Kindly accept this letter in response to the CPA meeting held January 3rd, 2024. Please see the response below pertaining to the CPA request to address the NCA Section 2 (a to l):*

**(a) alterations that may impair the capacity of the area to function as a habitat beneficial to wildlife.**

*At the outset of the project, an environmental survey was done to locate the indigenous vegetation on site (mostly mature Seagrapes) as well as locate the natural ridgeline running through the site. The house addition has been located behind the natural ridgeline and designed to disrupt the least amount of Seagrape trees. Please see the attached sketch which outlines the proposed new location of the pool which is placed further away from the HWM and behind the ridgeline. Turtle sensitive lighting will be used along the waterfront as per DoE recommendations.*

**(b) development that may increase the potential for damage to the area from floods, hurricanes or storms.**

*The footprint of the house addition extends sideways from the house and is proposed no closer to the HWM than the existing house. It sits behind the natural ridgeline which we would like to keep intact to buffer from hurricanes and storm surge. Also note that the existing house sits at 12'-6"ASL, which is well protected from storm surges, 18" higher than the largest storm surge from Hurricane Ivan. Please see the attached sketch which outlines the proposed new location of the pool which is placed further away from the HWM and behind the ridgeline.*

**(c) alterations of salinity levels, nutrient balance, oxygen concentration or temperature that may be harmful to wildlife or the ecological or aesthetic value of the area.**

*Not applicable to this planning application.*

**(d) alterations of hydrology, water flow, circulation patterns, water levels or surface drainage that may be harmful to wildlife or the ecological or aesthetic value of the area or that may exacerbate erosion.**

*Not applicable to this planning application.*

**(e) alterations that may interfere with the public use and enjoyment of the area.**

*The proposed house addition and proposed pool sit behind the natural vegetation line and beach ridge, which allows for ample public right of way along the beach.*

**(f) the discharge of pathogens, dissolved or suspended minerals or solids, waste materials or other substances at levels that may be harmful to wildlife or the ecological or aesthetic value of the area.**

*Not applicable to this planning application.*

**(g) changes in littoral or sediment transport processes that may alter the supply of sediment available for those processes or that may otherwise exacerbate erosion.**

*Not applicable to this planning application.*

**(h) alterations that may increase losses of the area from a rise in the sea level with respect to the surface of the land, whether caused by an actual sea level rise or land surface subsidence.**

*The proposed house addition and proposed pool sit behind the existing house. The proposed also sit behind the natural ridge as well as natural vegetation line which will act as a buffer from erosion.*

**(i) emissions of air pollutants at levels that may impair the air quality of the area**

*Not applicable to this planning application.*

**(j) alterations that may hinder or impede the movement or migration of wildlife**

*Given the relatively small footprint of the house addition and proposed pool, wildlife will not be affected on site. Almost all of the existing trees will be retained on site.*

**(k) alterations that may impair the capacity of a beach ridge to function as a protective barrier and as a reserve of sand for beach nourishment during storms**



*Note that 2 HWM surveys have been included in the site plan to show the cyclic nature of the waterline. No alterations are being made to the beach ridge. The natural importance of the beach ridge is understood and the proposed house addition and pool sit behind it.*

***(I) alterations that may impair the capacity of the area to act as a sink or reservoir of greenhouse gases or enhance its potential as a source of greenhouse gases.***

*The best way to combat greenhouse gases is to have and retain as many trees / vegetation as possible on site. This is aligned with the client's intention, who recognize the natural wealth of the existing trees on site and have gone to great length to save as many as possible.*

### ***Revised Pool Location***

*Please see the attached drawing (next page), which includes a redesigned pool further setback from the HWM. It sits further back from the beach ridge and has been redesigned to a circular shape to expose less of the pool to the HWM. Please consider the revised pool design for CPA approval.*



**2.15 MARTIN TROTT (MKS International) Block 44B Parcel 6 (P23-0793) (\$75,000) (KM)**

Application for a swimming pool.

**FACTS**

<i>Location</i>	Manse Road, Bodden Town
<i>Zoning</i>	<b>BRR</b>
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.31 ac. (13,503 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	House

**BACKGROUND**

Existing house approved in 2009

**Recommendation:** Discuss the application, **for the following reasons:**

- 1) HWM setback variance (63'8'' vs. 75')
- 2) Side setback variance (6', 6'11" & 10' vs. 20') pool equipment, steps & pool.
- 3) DOE's comments

**AGENCY COMMENTS**

Comments from the Department of Environment are provided below.

**Department of Environment**

*This review is provided by the Director of the Department of Environment (DoE) under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013). This review is provided in accordance with Section 41(3) of the National Conservation Act (NCA) and the Section 41 Guidance Notes issued by the National Conservation Council.*

***Site Overview***

*The subject parcel is located adjacent to a Marine Protected Area, namely a Marine Reserve, and based on over 20 years of DoE turtle nesting monitoring data, the beach on this site is identified as **critical turtle nesting habitat** in the National Conservation Council's Interim Directive for the designation of Critical Habitat of Green turtles (*Chelonia mydas*), Loggerhead turtles (*Caretta caretta*), Hawksbill turtles (*Eretmochelys imbricata*), Leatherback turtles (*Dermochelys coriacea*) and all other species that may occur in Cayman waters including Kemp's Ridley turtles (*Lepidochelys kempii*) (issued under Section 17 (7) of the National Conservation Act (2013)). Additionally, the site contains Inkberry (*Scaevola plumieri*) also called Bay Balsam, which is indigenous to all three Cayman Islands. Inkberry is critically endangered in the Cayman Islands and is a Schedule 1, Part 2 species under the NCA.*

## ***Environmental Impacts***

### ***Threats to Sea Turtles***

*All marine turtle species are listed in Part 1 of Schedule 1 to the NCA, as being ‘protected at all times’. The main threats to sea turtles from development on turtle nesting beaches are:*

- *Construction on the beach directly or indirectly impacting mature and hatchling sea turtles,*
- *Development on the beach directly removing nesting areas from the critical habitat and indirectly impacting the critical habitat through modification and degradation of the natural beach,*
- *Artificial lighting causing mature females to be deterred from nesting and hatchling turtles to crawl away from the sea, where they die from dehydration, exhaustion, predators or vehicles, and*
- *Loss of coastal vegetation.*

*The proposed pool is positioned within the designated critical habitat and does not meet the 75-foot coastal setback. Therefore, there will be direct removal of nesting area from the critical habitat and likely impacts from artificial lighting.*

### ***Artificial Lighting***

*Artificial lighting on and around turtle nesting beaches is one of the greatest threats to the survival of Cayman’s endangered sea turtle nesting populations. Bright lights on or near the beach can deter female turtles from nesting and cause baby turtles to crawl away from the sea, where they die from dehydration, exhaustion, predators or vehicles.*

*Turtle friendly lighting has been a legal requirement in ordinances in the United States for over 30 years. It is a proven solution to prevent the misorientation of sea turtles whilst safely and effectively lighting beachside properties. The Department strongly recommends the use of turtle friendly lighting on turtle nesting beaches. Figures 1-3 show examples of properties in Grand Cayman that have turtle friendly lighting installed.*



*Figures 1-3: Properties retrofitted to turtle friendly lighting along Seven Mile Beach, Grand Cayman (Source: DoE, various).*

### ***Construction Impacts***

*Operating heavy machinery during land clearing, demolition and construction presents a threat to nesting sea turtles. Construction and demolition works not only disturb the physical nesting habitat but heavy machinery and associated works can crush or bury baby sea turtles and turtle nests.*

*The excavation of the pool will likely result in a large quantity of sand. The sand is a key component of what makes the application site good for sea turtles. Any beach-quality sand excavated must be retained on-site.*

*Nesting sea turtles often use vegetation as a cue for nesting, and will crawl landwards up the beach until they reach the vegetation, or on a modified beach, a hard structure. When the vegetation is removed for construction, sea turtles can enter construction sites and be harmed. Figures 4 and 5 below show sea turtle tracks directly up to construction sites. The DoE has also been called to respond numerous times to sea turtles who have become trapped in construction sites. Figure 8 shows a sea turtle hatchling which was killed due to heavy equipment being operated on the beach.*



*Figures 4 & 5: Sea turtle tracks showing that the sea turtle has crawled up the beach until it reached a construction site (Source: DoE and Tammy Kelderman, 2021). The fence in Figure 4 is dangerous to sea turtles as it is sharp, rusty and not secure.*





*Figures 6 & 7: DoE photos showing turtle tracks within a construction site on a turtle nesting beach. This site did not have temporary beachside construction fencing to prevent turtles from entering the site. The turtle could have or may have been injured by construction materials and debris on-site (Source: DoE, 2023).*



*Figure 8: A dead sea turtle hatchling, which was killed by heavy equipment operating on the beach (Source: DoE, 2022).*

*For these reasons, construction fencing suitable for excluding turtles must be installed prior to the commencement of demolition and/or site works. Mesh fencing, Heras fencing,*

and chainlink fencing are all **unacceptable** as they can be dangerous to turtles and do not exclude them from the site. Mature green sea turtles weigh around 300 to 400 lbs and are capable and strong diggers.

*Temporary beachside construction fencing must be:*

- *Located as far landward as possible to leave room/habitat for the turtles to nest during the work;*
- *Made from a sturdy/solid material like plywood with no gaps (i.e. not chainlink fencing or the orange plastic fencing with holes as hatchlings can crawl through these and adults can knock it down or become tangled);*
- *Embedded at least 2 feet into the sand so that turtles cannot dig it out or crawl under;*
- *Installed in a manner that any nailing of the wood will be done so that the sharp ends are located on the landside of the fencing to prevent injury to turtles;*
- *Inspected by the DoE after installation and written approval shall be obtained from the DoE that the installed fence is suitable for the exclusion of turtles; and*
- *Suitable to contain all excavated material, construction materials and demolition waste landward of the fencing.*



*Figure 9: An example of suitable construction fencing to protect turtles (Source: DoE, 2022).*

### *Development Setbacks*

*Given the climate change predictions for the region, including sea level rise and increased intensity of storm events (including storm surge), coastal setbacks should not be reduced but instead should be treated as a minimum (as prescribed in the Development and Planning Regulations). It is important to highlight that setbacks seek to protect properties*



against these inevitable effects of climate change such as coastal flooding and erosion by ensuring that hard structures are not located in an area susceptible to these hazards.

Granting a variance for the proposed pool will result in the direct loss of the critical habitat of a protected species. The width of critical habitat is the sea turtle nesting habitat from the low water mark to the vegetation line (defined as the line of woody/permanent vegetation or the closest impermeable structure). The removal of sand and construction of hard structures on the critical habitat would result in the destruction of that area of critical sea turtle nesting habitat because turtles dig nests in the sand.

Therefore, replacing the critical sea turtle nesting habitat with a pool would have a direct and certain adverse effect on that critical habitat. On the 9<sup>th</sup> of January 2024, the DoE met with the applicants to discuss the application. During the meeting, the applicants expressed that they have attempted to build their pool as close to the house and as far away from the Mean High Water Mark as possible. The applicants expressed that their architect had instructed that they could not situate the pool right against the house where the proposed deck is because it needed to be a certain distance away from the footing of the house when excavating the sand/digging the foundation. The DoE expressed that it may be possible to elevate the pool to allow for an area for turtles to nest underneath, given the height change. However, the applicants have expressed their concern with this method because of the depth of the pool desired to accommodate artistic swimming. During the meeting, it was evident that the applicants had considered turtle nesting and the critical habitat designation during the design development and sought to minimise the impacts on turtles within the constraints of the existing development.



Figure 10: UKHO 2021 aerial imagery showing the proposed pool outlined in yellow and the approximate location of the inkberry in blue (DoE, 2024).

The DoE does not support the granting of coastal variances, and if the CPA were minded to refuse the application based on not meeting the minimum coastal setbacks then we would support this position. However, as it relates to turtles, granting approval for the proposed pool would result in the certain and direct loss of approximately 165 square feet of sea

turtle critical habitat between the existing retaining wall and the proposed retaining wall as part of the proposed pool. Therefore, we have proposed mitigation measures to address this loss.

### Inkberry

*Inkberry* (*Scaevola plumieri*) is becoming increasingly rare due to increased coastal development and the introduction of the imported and fast-growing invasive species of *Scaevola* (*Scaevola sericea*). The local *Inkberry* is distinguished from the invasive *Scaevola* as its berries are deep blue, unlike the invasive *Scaevola*'s pale white berries. Local *Inkberry* plants also have short round fleshy leaves that are smaller, stiffer, and a more matte-coloured green when compared to the invasive *Scaevola*'s shiny larger green leaves (Figures 11 & 12). Both species are coastal species and tend to be located on the beach. Both have similar looking similar small white half-flowers. *Inkberry* is salt tolerant and provides ornamental value making it great for seaside landscaping. Photos of the existing *Inkberry* on site and its approximate location are shown in Figures 10, 13 and 14.

Figure 11: Comparative photo showing the differences between local *Inkberry* (*Scaevola plumieri*) and the invasive *Scaevola* plant. Photo source: Ann Stafford, Cayman Nature website.



Figure 12: Comparative photo showing the differences between local *Inkberry* (*Scaevola plumieri*) and the invasive *Scaevola* plant. Photo source: Ann Stafford, Cayman Nature website.



*Figures 13 & 14: DoE site visit photos from 11 August 2021 showing the critically endangered inkberry plant on-site.*

*Due to the rarity of this plant, should permission be granted for this proposal, this native inkberry should be carefully transplanted to an appropriate recipient location or site.*

### **Impacts on the Marine Protected Area**

*The site is adjacent to a Marine Reserve (a Protected Area under the NCA). As such, best management practices must be implemented to avoid, minimise and mitigate impacts on the Marine Reserve. In particular, construction-related debris must not enter the marine environment. Poor construction management practices can degrade the environment by:*

- *Washing stockpiled aggregates, loose material or bulk material into the marine environment, causing turbidity and impacting water quality; and*
- *Polluting the marine environment with wind-borne debris. Practices such as sanding down ('keying') polystyrene, Styrofoam or insulating concrete forms (ICFs) which are used as part of wall finishing and window moulding can result in polystyrene waste materials getting blown into the sea in significant quantities.*

*The Department has witnessed and experienced complaints from members of the public regarding pollution from expanded polystyrene (EPS) beads on construction sites around the island (Figures 15-19). EPS is used in a variety of applications, including thermal insulation in buildings, civil engineering applications and decorative mouldings and panels. During construction, once EPS is cut, tiny microbeads are blown into the air, polluting neighbouring yards, stormwater drains, and nearby water bodies. Polystyrene is not biodegradable, and the EPS beads can be consumed by wildlife when they enter the food chain. EPS beads that make their way to the sea can be mistaken by fish and birds as fish eggs and have the potential to cause blockages in their digestive systems. These beads are very difficult to remove once they enter the water and they do not naturally break down*





*Figures 15-17: DoE site visit photos showing the bits of white polystyrene material littering local development sites. The beads from the first two images made their way into the adjacent Marine Reserve and neighbouring properties. Neighbours complained to the DoE about the pollution. Developers attempted to remedy the situation by cleaning neighbouring pools and yards daily but it was impossible to collect all of the beads, especially once they entered the marine environment. A screen was then fastened around the building to contain the beads. The last image was taken at a construction site located on the same critical turtle nesting beach coastline as the application site.*



*Figures 18 & 19: Cayman Compass photos from a news article showing polystyrene pollution from a development on a turtle nesting beach which is also adjacent to a Marine Protected Area.*

### **Section 41(3) Recommendations**

*If the Central Planning Authority or Planning Department is minded to grant planning permission for the proposed pool, we recommend the inclusion of the following conditions in the approval:*

1. *The native Inkberry plant shall be translocated to an appropriate recipient location reviewed and approved by the DoE. The DoE will document the new location of the transplanted Inkberry via GPS.*

#### **Section 41(4) Considerations**

*The site is designated as the critical habitat of a protected species under the NCA and would result in the introduction of additional development and artificial lighting onto that beach. Without appropriate controls, there would or would likely be an adverse effect on the designated sea turtle critical habitat, namely:*

- *Section 2(a) of the NCA: alterations that may impair the capacity of the area to function as a habitat beneficial to wildlife, and*
- *Section 2(j) alterations that may hinder or impede the movement or migration of wildlife.*

*In addition, the site is also adjacent to a Marine Protected Area under the NCA. Without appropriate environmental management practices, storage of materials too close to the protected area and inadequate management of construction wastes and debris can result in adverse effects on that protected area through the run-off and escape of materials and debris. Storms, high waves, high tides, rainy weather, or construction practices can result in the material entering the Marine Protected Area. Without appropriate environmental management practices during construction, there would or would be likely to be an adverse effect on the Marine Protected Area, namely:*

- *Section 2(f) of the NCA: the discharge of pathogens, dissolved or suspended minerals or solids, waste materials or other substances at levels that may be harmful to wildlife or the ecological or aesthetic value of the area.*

*On the basis of the above information and in accordance with the recent Court of Appeal judgement, in the exercise of powers which have been conferred through express delegation by the National Conservation Council pursuant to section 3(13) of the National Conservation Act (2013), the Director of DoE considers it necessary for **the Central Planning Authority to apply for approval from the NCC under section 41(4) of the NCA prior to determining this application.***

*Should the CPA wish to propose conditions as a means of mitigating the adverse impacts identified, please provide those conditions at the time of application for the DoE's review and approval. Once the DoE has received the CPA's application under Section 41(4) we will supply our Section 41(5) response in line within one week. We have provided a draft in Appendix 1.*



## ***Appendix 1: DRAFT Section 41(5) Conditions***

*In the exercise of powers which have been conferred through express delegation by the National Conservation Council, pursuant to section 3(13) of the National Conservation Act (2013) the Director of DoE, therefore, **respectfully directs that the following conditions be imposed by the Central Planning Authority or Department of Planning**, as part of any agreed proposed action for planning approval:*

### ***Prior to Any Site Works***

- 2. Prior to the commencement of any site works such as clearing, filling, grading and road construction, the property owner shall contact the Department of Environment to check for the presence of turtle nests; written approval shall be obtained from the Department of Environment that no nests will be impacted by the commencement of works.*

### ***Prior to the Issuance of a Building Permit***

- 3. Prior to the issuance of a Building Permit, the applicant shall prepare and submit a plan for review and approval to the Department of Environment for turtle friendly lighting, which minimises the impacts on sea turtles. Guidance on developing a lighting plan can be found in the Department of Environment's Turtle Friendly Lighting: Technical Advice Note (September 2018) available at <https://doe.ky/marine/turtles/tfl/>. The DoE's written approval must be received by the Planning Department prior to the issuance of the Building Permit.*
- 4. Prior to the installation of the beachside construction fencing and the commencement of construction works, the property owner shall contact the Department of Environment to check for the presence of turtle nests and to ensure that no nests will be impacted by the installation of the embedded fencing or the commencement of construction works. The Department of Environment's written approval shall be received by the Planning Department prior to the issuance of the Building Permit.*
- 5. Prior to the issuance of a Building Permit, beachside construction fencing associated with the works shall be installed and be positioned 50 feet from the Mean High Water Mark. The fencing shall be erected so that it fully encloses the beach-facing area of works and is embedded at least 2 feet into the beach profile to prevent turtles from entering the construction site or digging under the fencing. The applicant shall liaise directly with the Department of Environment for requirements guidance regarding this fencing. The Department of Environment will inspect the fencing and confirmation of the Department of Environment's written approval shall be received by the Planning Department prior to the issuance of the Building Permit.*

### ***During Construction***

6. *All construction materials including excavated materials and/or debris shall be stockpiled on the landward side of the construction fencing.*
7. *If the construction is using insulating concrete forms (ICFs), measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas or pollute the critical turtle nesting beach and adjacent Marine Protected Area offshore.*
8. *No construction work, vehicle access, storage of equipment/materials or other operations shall take place on the beach during turtle nesting season (1st May – 30th November yearly) without the express consent of the DoE.*
9. *Any sand excavated during construction shall be retained on-site and beach-quality sand shall be placed along the active beach profile. If sand is to be placed on the beach during turtle nesting season (1<sup>st</sup> May – 30<sup>th</sup> November yearly), the express consent of the DoE is required to ensure that turtle nests are not adversely impacted. If there is an excessive quantity of sand that cannot be accommodated on-site, and the applicant would like to move such sand off-site, it should be the subject of a separate consultation with the National Conservation Council.*

### ***Prior to the Issuance of a Certificate of Occupancy***

10. *Lighting and/or specifications for visible light transmittance shall be installed and maintained in accordance with the turtle friendly lighting plan which has been reviewed and approved by the Department of Environment. Once construction is complete, prior to the issuance of the Certificate of Occupancy, the Department of Environment will inspect the installed lighting for compliance with the approved turtle friendly lighting plan. Confirmation of the Department of Environment's written approval of the installed lighting and specifications for visible light transmittance after the inspection must be received by the Planning Department prior to the issuance of the Certificate of Occupancy.*

*These conditions are directed to prevent run-off and debris from entering the Marine Protected Area causing turbidity and impacting sensitive marine resources and to prevent the 'take' of sea turtles (Part 1 Schedule 1 species of the National Conservation Act) and adverse impacts on the critical habitat of sea turtles, which is defined in the Interim Directive for the designation of Critical Habitat of Green turtles (*Chelonia mydas*),*

*Loggerhead turtles (Caretta caretta), Hawksbill turtles (Eretmochelys imbricata), Leatherback turtles (Dermochelys coriacea) and all other species that may occur in Cayman waters including Kemp's Ridley turtles (Lepidochelys kempii) (issued under Section 17 (7) of the National Conservation Act (2013)).*

*A person aggrieved by a decision of the National Conservation Council to impose a condition of approval may, within 21 days of the date on which the decision is received from the Central Planning Authority/Department of Planning, appeal against the decision of the Council to the Cabinet by serving on the Cabinet notice in writing of the intention to appeal and the grounds of the appeal (Section 39 of the National Conservation Act, 2013). We trust that this information will be relayed to the applicant in the Department of Planning's decision letter.*

### **APPLICANT'S LETTER**

*We are seeking Planning approval for a swimming pool as per site plan submitted and kindly request the following variances:*

- 1. 65'-2" from the Mean High Water Mark (vs. 75') for pool.*
- 2. 6' side setback (vs. 20') for pool equipment*
- 3. 10' side setback for pool (vs. 20')*

*In order to have a 7' wide deck between pool and existing porch a 65'-2" MHWB setback will be required. There is an existing concrete retaining wall located 69'-10" from the MHWB which will be removed for the new swimming pool. The property at 44B 380 has a swimming pool located approximately 50' from the MHWB. For this reason, asking for a variance from the 75' HWM is consistent with the area.*

*We feel that having the Department grant the requested variances falls under section 8 (13) in the Development and Planning Regulations:*

- (b) (i) the characteristics of the proposed development is consistent with the character of the surrounding area;*
- (b) (iii) the proposal will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighborhood, or to the public welfare.*

### **PLANNING DEPARTMENT ANALYSIS**

#### **General**

The proposed swimming pool is located on Manse Road in Bodden Town.

## **Zoning**

The property is zoned Beach Resort Residential.

## **Specific Issues**

### **6) HWM Setback Variance**

The proposed swimming pool is located at 63'.8" vs 75' from the high-water-mark; therefore, the applicant is seeking an HWM setback variance from the Authority, as the proposed does not meet regulation 8(10)(f) for this beach resort residential zone,

### **7) Side Setback Variances**

In addition to the above mentioned, the applicant is also seeking a 6, 6'.11" & 10 vs 20' side setback from the proposed pool equipment, steps & pool respectively; therefore, not meeting regulation 15(4)(f) this beach resort residential zone.

## **2.16 BEVERLEY & TONY BERNARD (PPDS) Block 38B Parcel 163 (P23-1175) (\$1,000) (MW)**

Application for an 8 lot subdivision (7 residential lots, 1 road parcel)

### **FACTS**

<i>Location</i>	Bristol Heights Dr., Bodden Town
<i>Zoning</i>	<b>Low Density Residential</b>
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	2.5 ac. (108,900 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Vacant

### **BACKGROUND**

October 11, 2023 (CPA/24/23; Item 2.17) – Prior to a full review under the Development and Planning Act (2021 Revision), The Development Plan 1997 and the Development and Planning Regulations (2022 Revision) and after reviewing the proposal in light of Section 41(3) of the National Conservation Act (2014) (NCA), it was resolved to adjourn the application and invite the applicant to address the Authority regarding potential adverse effects of the proposal, as defined in Section 2 (a-l) of the NCA.

The Authority would also like to address with the applicant concerns regarding the subdivision design.

**Recommendation:** Discuss the application, **for the following reasons:**

- 1) Lot widths
- 2) LPP lot size (5,055 sq. ft. vs. 5,445 sq. ft.)

### 3) NCA 2(a-l) input

#### **AGENCY COMMENTS**

Comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment are noted below.

##### **Water Authority**

*Please be advised that the Water Authority's requirements for this development are as follows:*

##### **Wastewater Treatment**

- *The developer is advised that wastewater treatment and disposal requirements for built development are subject to review and approval by the Water Authority.*

##### **Stormwater Management**

- *This development is located over the (Lower Valley) fresh water lens or within the 500m buffer zone of the lens. In order to protect the fresh water lens, the Water Authority requests that stormwater drainage wells are drilled to a depth of 60 ft instead of the standard depth of 100ft as required by the NRA.*

##### **Water Supply**

*The proposed development site is located within the Water Authority's piped water supply area.*

- *The developer shall contact Water Authority's Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the piped water supply.*
- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- *The developer shall install the water supply infrastructure within the site, under the Water Authority's supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority's web page: <http://www.waterauthority.ky/water-infrastructure>.*

***The Authority shall not be held responsible for delays and/or additional costs incurred by the developer due to the developer's failure to provide sufficient notice to the Authority.***

##### **National Roads Authority**

*As per your memo dated September 6th, 2023 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

##### **Stormwater Management Issues**



*A comprehensive drainage plan needs to be provided by the applicant for the entire project.*

*The applicant shall demonstrate that the Stormwater Management system can be designed to include storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and ensure that surrounding properties that are lower, and nearby public roadways are not subject to stormwater runoff from this site.*

### ***Infrastructure Issues***

*The NRA advises the CPA to require the developer to provide for signage (stop signs, etc.), street lighting and any other traffic calming measures on the proposed roads of the subdivision. Once the roadway has been taken over as a public road, the NRA can then assume that responsibility. This site will need a stop sign with stop bars at the junction of Bristol Heights Drive.*

*A thirty (30) ft. wide road parcel needs to be provided in order to have adequate access as the NRA does not endorse the use of vehicular ROWs.*

*The subdivision's road base shall be constructed to NRA minimum design and construction specifications for subdivision roads - this includes elevations, minimum longitudinal slopes and minimum cross fall of minus 2 percent from the centre line to the shoulder.*

*The roadway shall be HMA. The NRA shall inspect and certify the road base construction prior to HMA surfacing activities.*

*All internal roadway curves (horizontal alignment) shall be no less than 46 feet centreline radius. This requirement ensures that the minimum vehicle sweeps for a standard garbage and/or fire truck can be accommodated by the site layout.*

*Should you have any questions, please do not hesitate to contact the undersigned.*

### **Department of Environment (17-1-24)**

*This review is provided by the Director of the Department of Environment under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*

### ***Site Overview***

*The application site consists of primary dry forest and shrubland. Primary habitat is mature habitat in its natural state, otherwise uninfluenced by human activity where ecological processes are not significantly disturbed. These habitats are often very old, existing long before humans and may consist of many endemic and ecologically important species. Primary habitat is in severe decline and becoming a scarce and highly threatened resource as a result of land conversion for human activities.*

### ***Advice to the Applicant***

*The applicant should keep clearing and filling to a minimum and retain as much primary habitat as possible to incorporate it into the landscaping scheme for the development. Primary habitat and native vegetation can be retained and used in a variety of ways on a property:*

- *It can be retained along parcel boundaries and between buildings to serve as privacy, noise and sound buffers and screening.*
- *It can be incorporated into the landscaping schemes for low-maintenance low-cost landscaping. Native plants are best suited for the conditions of the site, including the temperature and amount of rainfall. They are climate-appropriate and require less maintenance and irrigation.*
- *It can serve as an amenity, providing green space and shade for those who live nearby or on the property.*
- *It can remain as a habitat for endemic wildlife such as anoles, birds and butterflies. This habitat helps to contribute to the conservation of our local species.*
- *It can assist with drainage directly by breaking the momentum of rain, anchoring soil, and taking up water and indirectly by keeping the existing grade and permeable surfaces.*
- *It can help reduce carbon emissions by leaving the habitat to act as a carbon sink and allow natural processes to remove carbon dioxide from the atmosphere. Destroying native vegetation releases carbon stored in the plant material, soil and peat.*
- *When located in an area of wider primary habitat, wildlife corridors can be created connecting areas of a habitat that would have otherwise been isolated through development, allowing for the movement of animals and the continuation of viable populations.*

#### ***Advice to the Central Planning Authority/Planning Department***

*As the site is primary habitat, we would recommend not including a condition requiring each residential lot to be cleared and filled. We note that the application is for a subdivision, we would **not** support the clearing of this site at this time. Land clearing should be reserved until the development of individual lots is imminent (through the granting of planning permission for development on those particular lots). This allows the opportunity for the individual lot owners to retain as much native vegetation as possible. Clearing the entire site prematurely removes the choice from the individual lot owners and removes the value the habitat could provide in the time between the preparation of a subdivision and the development of an individual lot.*

*If the Central Planning Authority or Planning Department is minded to grant planning permission for the proposed subdivision, the DoE recommends the inclusion of the following conditions in any planning permission to minimise impacts on this valuable habitat:*

1. *There shall be no land clearing, excavation, filling or development of the resultant residential parcels (Lots 1 to 7) without planning permission for such works being granted.*

## **Fire Department**

*The Fire department have no objection and save comments for future development. The Cayman Islands Fire Service adheres to the 2006 Fire Brigade Law, 1995 revision Fire Brigade law of the 1994 Standard Fire Prevention Code, the 1997 Fire Code, and all relevant NFPA Codes. (5-1-24)*

## **APPLICANT'S LETTER**

*The subject property, situated within the Low-Density Residential zone encompasses an area of 2.50 ac/108,900 sf and is accessed from Bristol Heights Road off Beach Bay Road. The proposal seeks to subdivide the land into 7 residential lots and a road parcel, all of the residential lots exceed the minimum lot size requirement.*

*As members are aware Regulation 9(8)(g) requires a minimum lot width of 80 ft for houses and duplexes. The proposed subdivision incorporates a turning head which results in lot widths of 15' to 30.1' for parcels 4-6 which directly correspond with the access points.*

*In accordance with Regulation 8(13), we respectfully request the Central Planning Authority to consider and grant a variance for the proposed lot widths of parcels 4-6. We believe several factors support this request and demonstrates sufficient reason and exceptional circumstance:*

### *1) Consistency with surrounding area character*

*- The characteristics of the proposed development align seamlessly with the existing character of the surrounding area, in particular existing cul-de-sacs located to the south-east and south which also include turning heads resulting in below the minimum required lot widths.*

### *2) Parcel size and consistency*

*- The resulting lots from the subdivision maintain sufficient size and area consistent with neighbouring land lots.*

*- The proposed development ensures suitable developable envelopes, fostering future development that aligns with the area's character.*

*In light of these considerations, we are confident that the proposed variance will not be materially detrimental to the community, neighbouring properties, or public welfare.*

*Thank you for your attention to this, and we look forward to your favourable response.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for a (8) Lot Subdivision (7 residential lots & (1) road parcel) to be located on Bristol Heights Dr., Bodden Town.

## **Zoning**

The property is zoned Low Density Residential and the Department would offer the following comments regarding the specific issue noted below.

## **Specific Issues**

### **1) Lot Width**

Regulation 9(8)(g) states *“the minimum lot width for detached and semi-detached houses and duplexes is 80 feet.”* The proposed width of Lot 2 (30.0’), Lot 3 (52.6’), Lot 4 (24.4’), Lot 5 (41.2’) & Lot 7 (63.9’) fall short of the minimum requirement. It is suggested that the lot widths could be increased through a change in the design of the subdivision. The current design includes a cul-de-sac which has resulted in the deficient lot widths. If the cul-de-sac was eliminated and replaced with a straight road with a half hammerhead, the resultant lots would be more uniform in shape and the lot widths would either comply or be very near compliance.

### **2) LPP Lot Size**

Regulation 28 (1) states *“according to the size of a subdivision, the Authority may require the applicant to set aside land not exceeding 5% of the gross area of the land being developed, for public purposes, including active and passive recreation and public rights of way.”* The submitted plan shows a designated LPP lot which is approximately 5,055 sq. ft. the minimum required LPP lot size would be 5,445 sq. ft. to cover the required 5%, the proposed would have a difference of 390 sq. ft. respectively.

## **SUPPLEMENTAL ANALYSIS**

There have been no changes to the plans. The applicant has chosen not to appear before the Authority per their reason in the above letter.

### **2.17 TONIE BROWN (ABERNETHY & ASSOCIATES LTD.) Block 69A Parcel 84 (P23-0535) (\$5,654) (MW)**

Application for a 5 lot subdivision.

## **FACTS**

<i>Location</i>	Queens Hwy., East End
<i>Zoning</i>	<b>Low Density Residential</b>
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	4 ac. (174,240 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Vacant
<i>Proposed building size</i>	

## **BACKGROUND**

NA

**Recommendation:** Discuss the application, **for the following reasons:**

- 1) Subdivision design
- 2) NRA concerns

### **AGENCY COMMENTS**

Comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment are noted below.

#### **Water Authority**

*Please be advised that the Water Authority's requirements for this development are as follows:*

#### **Wastewater Treatment**

- *The developer is advised that wastewater treatment and disposal requirements for built development are subject to review and approval by the Water Authority.*

#### **Water Supply**

*The proposed development site is located within the Water Authority's piped water supply area.*

- *The developer shall contact Water Authority's Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the piped water supply.*
- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- *The developer shall install the water supply infrastructure within the site, under the Water Authority's supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority's web page:*  
<http://www.waterauthority.ky/water-infrastructure>.

***The Authority shall not be held responsible for delays and/or additional costs incurred by the developer due to the developer's failure to provide sufficient notice to the Authority.***

#### **National Roads Authority**

*As per your email dated July 19th, 2023, the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

#### **General Issues**



- *The subdivision does not have an acceptable cul-de-sac terminal.*
- *There are too many accesses on Queens Highway especially given its 50-mph speed limit.*

*The NRA requests that the CPA have the applicant redesign the subdivision to: (1) include an acceptable cul-de-sac terminal (attached), and (2) redesign the subdivision so that the lots are accessed internally.*

*The applicant is also to be reminded that a road meeting the NRA standards for a road will have to be built from Queens Highway to the shared boundary with 69A1.*

### ***Stormwater Management Issues***

*A comprehensive drainage plan needs to be provided by the applicant for the entire project. The applicant shall demonstrate that the Stormwater Management system can be designed to include storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and ensure that surrounding properties that are lower, and nearby public roadways are not subject to stormwater runoff from this site.*

### ***Infrastructure Issues***

*The NRA advises the CPA to require the developer to provide for signage (stop signs, etc.), street lighting and any other traffic calming measures on the proposed roads of the subdivision. Once the roadway has been taken over as a public road, the NRA can then assume this responsibility. This site will need a stop sign with stop bars at the junction of Queens Highway.*

*A thirty (30) ft. wide road parcel needs to be provided in order to have adequate access as the NRA does not endorse the use of vehicular ROWs.*

*The subdivision's road base shall be constructed to NRA minimum design and construction specifications for subdivision roads - this includes elevations, minimum longitudinal slopes and minimum cross fall of minus 2 percent from the centre line to the shoulder.*

*The roadway shall be Hot Mix Asphalt (HMA). The NRA shall inspect and certify the road base construction prior to HMA surfacing activities. All internal roadway curves (horizontal alignment) shall be no less than 46 feet centreline radius. This requirement ensures that the minimum vehicle sweeps for a standard garbage and/or fire truck can be accommodated by the site layout.*

*Should you have any questions, please do not hesitate to contact the undersigned.*

### **Department of Environment (8-8-23)**

*This review is provided by the Director of the Department of Environment under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*

*The application site consists of predominately primary dry shrubland and forest as well as secondary growth as shown in Figure 1. Primary habitat is mature habitat in its natural state, otherwise uninfluenced by human activity where ecological processes are not significantly disturbed. These habitats are often very old, existing long before humans and may consist of many endemic and ecologically important species. Primary habitat is in*

*severe decline and becoming a scarce and highly threatened resource as a result of land conversion for human activities. Secondary growth also provide ecosystem system services and benefits such as providing habitat*



*Figure 1: Aerial imagery showing the application site outlined in red (Image source: UKHO, 2021)*

*We note that the application is for a subdivision, we would **not** support the clearing of this site at*

*this time. Land clearing should be reserved until the development of individual lots is imminent (through the granting of planning permission for development on those particular lots). This allows the opportunity for the individual lot owners to retain as much native vegetation as possible. Clearing the entire site prematurely removes the choice from the individual lot owners and removes the value the habitat could provide in the time between the preparation of a subdivision and the development of an individual lot.*

*Primary and secondary habitat along with native vegetation can be retained and used in a variety of ways on a property:*

- *It can be retained along parcel boundaries and between buildings to serve as privacy, noise and sound buffers and screening.*
- *It can be incorporated into the landscaping schemes for low-maintenance low-cost landscaping. Native plants are best suited for the conditions of the site, including the temperature and amount of rainfall. They are climate-appropriate and require less maintenance and irrigation.*
- *It can serve as an amenity, providing green space and shade for those who live nearby or on the property.*

- *It can remain as a habitat for endemic wildlife such as anoles, birds and butterflies. This habitat helps to contribute to the conservation of our local species.*
- *It can assist with drainage, directly through breaking the momentum of rain, anchoring soil, and taking up of water and indirectly through keeping the existing grade and permeable surfaces.*
- *It can help reduce carbon emissions by leaving the habitat to act as a carbon sink and allow natural processes to remove carbon dioxide from the atmosphere. Destroying native vegetation releases carbon stored in the plant material, soil and peat.*
- *When located in an area of wider primary habitat, wildlife corridors can be created connecting areas of a habitat that would have otherwise been isolated through development, allowing for the movement of animals and the continuation of viable populations.*

*If the Central Planning Authority, or Planning Department is minded to grant planning permission for the proposed subdivision, the DoE recommends the inclusion of the following condition in any planning permission to minimise impacts to this valuable habitat:*

1. *There shall be no land clearing, excavation, filling or development of the resultant parcels without planning permission for such works being granted.*

### **Fire Department**

*The Fire department have no objection and save comments for future development. The Cayman Islands Fire Service adheres to the 2006 Fire Brigade Law, 1995 revision Fire Brigade law of the 1994 Standard Fire Prevention Code, the 1997 Fire Code, and all relevant NFPA Codes.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for a 5 lot subdivision, 1 remainder lot & combination to be located on Queens Hwy., East End.

### **Zoning**

The property is zoned Low Density Residential.

### **Specific Issues**

#### **1) Subdivision design**

The Authority should note the current subdivision design includes parcel side boundaries that meet the road at a very acute angle, the design detail often leads to setback issues with future development applications as well as possible conflicts with neighbours over where the boundaries are located as most will assume that the parcel boundary is perpendicular with the road.

**2.18 CAYMAN PROPERTY INVESTMENTS LTD. (MJM Design Studio) Block 5B  
Parcel 151 (P23-0294) (\$11,000,000) (MW)**

Application to modify planning permission to revise the site plan to reflect the final size of the sewage treatment plant and required garbage enclosure location/size & modification to unit floor layout & pool deck / pool & add roof top storage units.

**FACTS**

<i>Location</i>	West Bay Rd., West Bay
<i>Zoning</i>	<b>Neighbourhood Commercial</b>
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	0.2733 ac. (11,904.948 sq. ft.)
<i>Parcel size required</i>	20,000 sq. ft.
<i>Current use</i>	Approved apartments under construction.
<i>Proposed building size</i>	28,081 sq. ft.
<i>Total building site coverage</i>	56.59%
<i>Allowable units</i>	CPA discretion
<i>Proposed units</i>	6
<i>Allowable bedrooms</i>	CPA discretion
<i>Proposed bedrooms</i>	24
<i>Required parking</i>	9
<i>Proposed parking</i>	11

**BACKGROUND**

September 29, 2021 – Three story apartment building with amenities (CPA/20/21; Item 2.1) – the application was considered and it was resolved to grant planning permission.

**Recommendation:** Discuss the application, **for the following reasons:**

- 1) Building height (53’-6” (storage units) vs. 40’-0”)

**AGENCY COMMENTS**

Comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment are noted below.

**Water Authority**

*This development has been previously approved at the BCU stage for a treatment plant. For treatment plant design changes, please resubmit as a condition fulfillment in OPS for the Water Authority to review and approve the revisions.*



## Department of Environmental Health

### *Solid Waste Facility:*

- 1. This development require 6 (33) gallon bins and an enclosure built to the department's requirements.*
  - a. The enclosure should be located as closed to the curb as possible without impeding the flow of traffic.*
  - b. The enclosure should be provided with a gate to allow removal of the bins without having to lift it over the enclosure.*

## Department of Environment (22 November 2023)

*This review is provided by the Director of the Department of Environment (DoE) under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*

*The application site is man-modified and of low ecological value. However, the beach at Boggy Sand Road, to the west of the site (across the street), is a turtle nesting beach. The beach to the north east and south east is designated Critical Habitat for sea turtles in the Interim Directive for the designation of Critical Habitat of Green turtles (*Chelonia mydas*), Loggerhead turtles (*Caretta caretta*), Hawksbill turtles (*Eretmochelys imbricata*), Leatherback turtles (*Dermochelys coriacea*) and all other species that may occur in Cayman waters including Kemp's Ridley turtles (*Lepidochelys kempii*) and hybrids (2020)). The areas of turtle nesting and Critical Habitat are shown in Figure 1 below.*



*Figure 1. The site outlined in blue and areas of sea turtle Critical Habitat (red) and sea turtle nesting beaches (yellow) (Image Source: Lands and Survey, 2018)*

*Given the potential to impact turtle nesting beaches, we reviewed an updated Turtle Friendly Lighting Plan and noted the minor changes in the position of approved light fixtures. We trust that Condition 13 of the original Planning Decision Letter will remain applicable and therefore we have no further environmental concerns.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for a site plan modification to reflect the final size of sewage treatment plant and required garbage enclosure location/size & modification to unit floor layout & pool deck / pool & add roof top storage units to be located on West Bay Rd., West Bay.

### **Zoning**

The property is zoned Neighbourhood Commercial.

### **Specific Issues**

#### **1) Building Height**

Regulation 13(7)(a) states “*The maximum height of any building in a Neighborhood Commercial zone shall be 40’ or 3 stories, whichever is the greater.*” The applicant has proposed various modifications to the site which per the current zoning are acceptable. The proposed building height from finished grade to the peak of the proposed storage units would be 53’-6” a difference of 13’-6” respectively.

Regulation 8(4A) of The Development and Planning (Amendment) Regulations, 2023 states:

“(4A) Notwithstanding paragraph (2), the maximum permitted height of a building in the zones specified in paragraph (2)(a), (c), (e) and (f) may be increased, upon application, at the discretion of the Authority by no more than one storey for the purpose of the erection of a structure on the roof of a building where the structure will be —

(a) for the common use areas and public use areas of the building; and

(b) to enhance the primary use of the building,

and the following conditions shall apply —

- (i) no more than one application shall be made under this regulation;
- (ii) if covered by a roof, the square footage of the structure shall not be greater than seventy per cent of the square footage of the storey immediately below the roof;
- (iii) the height of the structure shall not exceed any limit in height as may be prescribed by the Cayman Islands Airports Authority with regard to the flight approach zone patterns of an airport, whichever is the lesser of the two;



- (iv) the floor to ceiling height of the structure shall not exceed ten feet;
- (v) the provisions of paragraph (4) shall not apply so as to permit the placement of any structure or appurtenance on the roof of the structure;
- (vi) written notice shall be given to adjacent landowners in respect of the proposed use; and
- (vii) the structure shall comply with the Building Code Regulations (2022 Revision).”

The Authority should determine if the proposed building height is acceptable given the above noted Regulation.

**2.19 DAVENPORT DEVELOPMENT LTD. Block 72C Parcel 290 (P23-0623) (\$3.2 million) (NP)**

Application for townhouses, pool, gazebo & 4 foot wall

**FACTS**

<i>Location</i>	Skipwith Link, East End
<i>Zoning</i>	<b>Medium Density Residential</b>
<i>Notification Results</i>	No objections
<i>Parcel size</i>	48,917 sq ft
<i>Parcel size required</i>	20,000 sq ft
<i>Current use</i>	Vacant
<i>Proposed use</i>	16 Townhouses
<i>Building Footprint</i>	12,388 sq ft
<i>Building Area</i>	32,144 sq ft
<i>Units Permitted</i>	22
<i>Units Proposed</i>	16
<i>Bedrooms Permitted</i>	33
<i>Bedrooms Proposed</i>	40
<i>Parking Required</i>	24
<i>Parking Proposed</i>	33

**Recommendation:** Discuss planning permission for the following reasons:

- 1) Suitability for apartments
- 2) Number of bedrooms (40 vs 33)
- 3) NRA comments

## **AGENCY COMMENTS**

The following comments have been received to date:

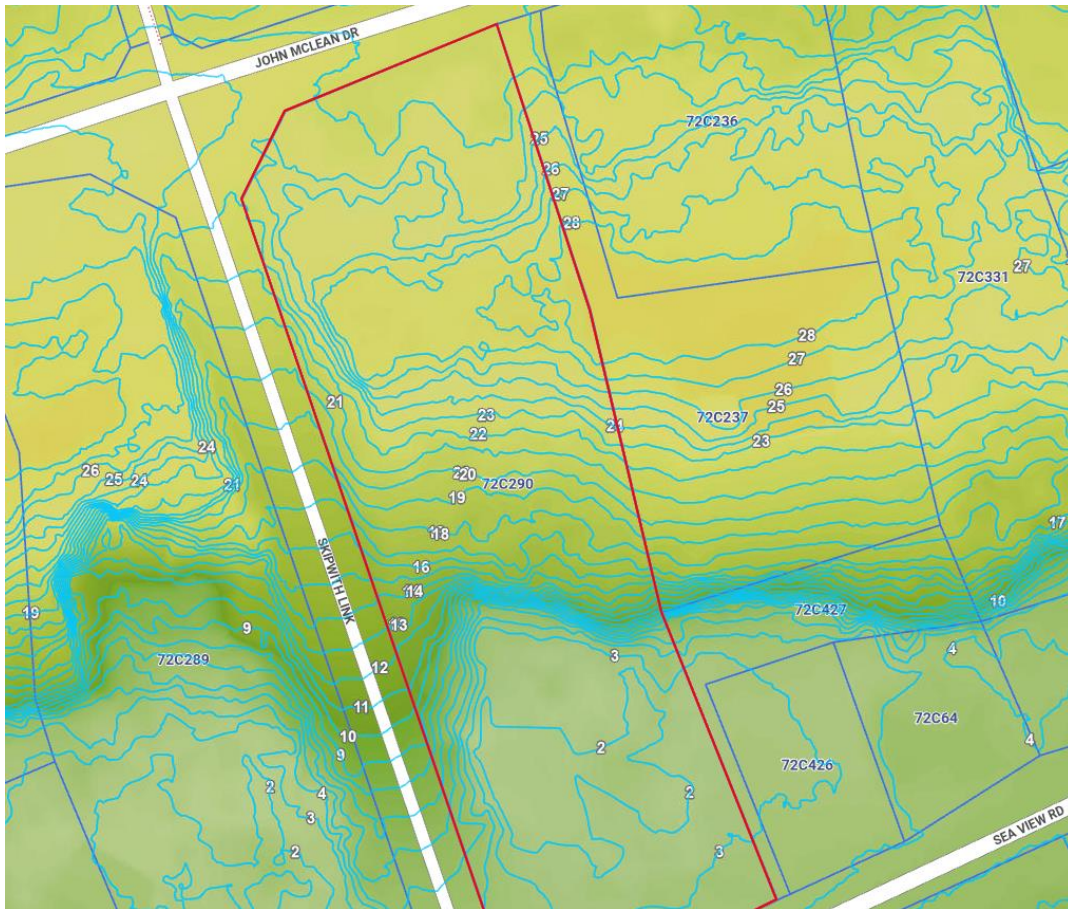
### **Department of Environment (September 1, 2023)**

*This review is provided by the Director of the Department of Environment under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*

*The majority of the application site is primary habitat which consists of a mixture of primary dry forest and woodland and primary dry shrubland habitats. The boundaries of the parcel have been impacted by edge effects likely due to the surrounding development and these areas are now man-modified with a re-growth of vegetation.*

*Primary habitat is a mature habitat in its natural state, otherwise uninfluenced by human activity where ecological processes are not significantly disturbed. These habitats are often very old, existing long before humans, and may consist of many endemic and ecologically important species. Primary habitat is in severe decline and becoming a scarce and highly threatened resource as a result of land conversion for human activities.*

*We note that the parcel contains an elevated ridge as shown in Figure 1. Based on the site plans submitted, it appears that the applicant will be retaining the elevation. We are encouraged to see that the applicant will retain the ridge. We support this retention and would not support the excavation of the ridge.*



*Figure 1: Extract of the application site outlined in red showing the elevations within the parcel based on Lands and Survey 2018 digital terrain model. (Source: Cayman Land Info)*

*We note from the plans submitted that the majority of the parcel will be hardstanding and that there is little opportunity to retain native vegetation for incorporation into the landscaping scheme. Typically, primary habitat and native vegetation can be retained and used in a variety of ways on a property:*

- *It can be retained along parcel boundaries and between buildings to serve as privacy, noise, and sound buffers and screening.*
- *It can be incorporated into the landscaping schemes for low-maintenance low-cost landscaping. Native plants are best suited for the conditions of the site, including the temperature and amount of rainfall. They are climate-appropriate and require less maintenance and irrigation.*
- *It can serve as an amenity, providing green space and shade for those who live nearby or on the property.*
- *Shade provided by retaining mature vegetation can also help to lower cooling demand and utility costs.*

- *It can remain as a habitat for endemic wildlife such as anoles, birds, and butterflies. This habitat helps to contribute to the conservation of our local species.*
- *It can assist with drainage, directly by breaking the momentum of rain, anchoring soil, and taking up water, and indirectly by keeping the existing grade and permeable surfaces.*
- *It can help reduce carbon emissions by leaving the habitat to act as a carbon sink and allow natural processes to remove carbon dioxide from the atmosphere. Destroying native vegetation releases carbon stored in the plant material, soil, and peat.*
- *When located in an area of wider primary habitat, wildlife corridors can be created connecting areas of a habitat that would have otherwise been isolated through development, allowing for the movement of animals and the continuation of viable populations.*

*If there is any opportunity to incorporate native plants in the landscaping scheme we strongly recommend this.*

*Best management practices should also be adhered to during construction to reduce impacts on the environment. In particular, control measures should be put in place to address pollution from expanded polystyrene (EPS) beads on construction sites, for example, those used in insulating concrete forms (ICF). Polystyrene is not biodegradable, and the EPS beads can be consumed by wildlife when they enter the food chain. These beads are very difficult to remove once they enter the environment and they do not naturally break down. We also recommend that the applicant consider the use of porous or permeable surfaces in areas of hard standing such as the parking areas.*

*If the Central Planning Authority or Planning Department is minded to grant planning permission for the proposed development, we recommend the inclusion of the following condition in the approval:*

1. *If the construction uses insulating concrete forms (ICFs) or other polystyrene materials, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas.*

## **Water Authority Cayman**

*The Water Authority's requirements for the proposed development are as follows:*

### *Wastewater Treatment and Disposal*

*The developer, or their agent, shall submit an Onsite Wastewater Treatment Proposal, per the attached Form, which meets the following requirements. Water Authority review and approval of the proposed system is a condition for obtaining a Building Permit.*

- *The proposed development requires Aerobic Treatment Unit(s) with NSF/ANSI Standard 40 (or equivalent) certification that, when operated and maintained per manufacturer's guidelines, the system achieves effluent quality of 30 mg/L Biochemical Oxygen Demand and 30 mg/L Total Suspended Solids. The proposed system shall have*

a treatment capacity of at least 4,200 US gallons per day (gpd), based on the following calculations.

<i>BUILDING</i>	<i>UNITS/BLDG</i>	<i>GPD/UNIT</i>	<i>GPD/BLDG</i>	<i>GPD</i>
<i>Block 1</i>	8	225,300	2,100	2,100
<i>Block 2</i>	8	225,300	2,100	2,100
<i>TOTAL</i>				<i>4,200 GPD</i>

- *Treated effluent from the ATU shall discharge to an effluent disposal well constructed by a licensed driller in strict accordance with the Authority's standards. The minimum well casing diameter for this development shall be 6''. Licensed drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.*
- *To achieve gravity flow, treated effluent from the ATU must enter the disposal well at a minimum invert level of 5'3" above MSL. The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well, which fluctuates with tides and perching of non-saline effluent over saline groundwater.*

#### *Stormwater Management*

*This development is located over the East End freshwater lens or within the 500m buffer zone of the lens. To protect the freshwater lens, the Water Authority requests that stormwater drainage wells are drilled to a depth of 80 ft instead of the standard depth of 100ft as required by the NRA.*

#### *Water Supply*

*The proposed development site is located within the Water Authority's piped water supply area.*

- *The developer shall contact Water Authority's Engineering Services Department at 949-2837 without delay to be advised of the site-specific requirements for connection to the public water supply.*
- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- *The developer shall install the water supply infrastructure within the site, under the Water Authority's supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority's web page: <http://www.waterauthority.ky/water-infrastructure>*



*The Authority will not be held responsible for delays and/or additional costs incurred by the developer due to the developer's failure to provide sufficient notice to the Authority.*

## Department of Environmental Health

*The applicant requested consideration for the enclosure to remain as per the initial layout. An email was sent to the director for a decision.*

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**From:** Simms, Richard  
**Sent:** Wednesday, September 27, 2023 12:57 PM  
**To:** Hislop, Shavonnie <[Shavonnie.Hislop@gov.ky](mailto:Shavonnie.Hislop@gov.ky)>; Rodrigues, Paulino <[Paulino.Rodrigues@gov.ky](mailto:Paulino.Rodrigues@gov.ky)>  
**Subject:** RE: P23-0623 72C 290 Davenport Development Ltd - Vista Colina, Skipwith Lane

Shavonnie,

I had another look and based on the layout of the property from John McLean to Church Street to waste proposal is still fine.

Regards,

**Richard Simms, Cert. Hon | Director**

<

Cayman Islands Environmental Centre  
580 North Sound Road | P.O. Box 1820 | KY1-1109 | Cayman Islands  
Main Office: 345.949.6696 | Direct: 345.244.5950  
[www.deh.gov.ky](http://www.deh.gov.ky)

## National Roads Authority

*As per your email dated August 16th, 2023, the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

### General Issues

*Driveways may be no closer to the corner of intersecting rights of way than 60% of parcel frontage or one-hundred feet (100'); whichever is less. Driveways shall not align with driveways on the opposite side as would be the case with the proposed driveways and those of Block 72C Parcels 73 and 227. A separation of one-hundred and twenty feet (120') is desirable. The NRA requests that the CPA have the applicant reconfigure the site plan so that the lot is accessed from Skipwith Link only.*

### Road Capacity Issues

*The traffic demand to be generated by a residential development of sixteen (16) dwelling units has been assessed in accordance with ITE Code 220 – Apartments. Thus, the assumed average trip rates per dwelling unit provided by the ITE for estimating the daily, AM and PM peak hour trips are 6.65, 0.51 and 0.62 respectively. The anticipated traffic to be added to Seaview Road and John McLean Drive is as follows:*

<i>Expected Daily Trips</i>	<i>AM Peak Hour Total Traffic</i>	<i>AM Peak 20% In</i>	<i>AM Peak 80% Out</i>	<i>PM Peak Hour Total Traffic</i>	<i>PM Peak 65% In</i>	<i>PM Peak 35% Out</i>
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<b>106</b>	<b>8</b>	<b>2</b>	<b>6</b>	<b>10</b>	<b>6</b>	<b>4</b>
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*Based on these estimates, the impact of the proposed development on Seaview Road and John McLean Drive is considered to be minimal.*

#### **Access and Traffic Management Issues**

*Entrance and exit curves shall be no less than fifteen (15) feet in radius. Entrances shall be twenty-four (24) feet wide.*

*A six (6) foot sidewalk shall be constructed on Seaview Road, Skipwith Link, and John McLean Drive within the property boundary and built to NRA Specifications (available on our website at: <https://www.caymanroads.com/upload/files/3/Sidewalk%20&%20Curbing%20Details.pdf>).*

*One-way driveway aisles with diagonal parking shall be between twelve (12) to sixteen (16) ft. wide. Two-way driveway aisles shall be a minimum of twenty-two (22) ft. wide.*

*Tire stops (if used) shall be placed in parking spaces such that the length of the parking space is **not reduced below the sixteen-foot (16') minimum.***

#### **Stormwater Management Issues**

*The applicant is encouraged to implement state-of-the-art techniques that manage stormwater runoff **within the subject parcel** and retain existing drainage characteristics of the site as much as is feasible through innovative design and the use of alternative construction techniques. However, it is critical that the development be designed so that post-development stormwater runoff is **no worse than** pre-development runoff. To that effect, the following requirements should be observed:*

- The applicant shall demonstrate, prior to the issuance of any Building Permits, that the Stormwater Management system is designed to embrace storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and ensure that surrounding properties and/or nearby roads are not subject to stormwater runoff from the subject site.*
- The stormwater management plan shall include spot levels (existing and finished levels) with details of the overall runoff scheme. Please have the applicant provide this information prior to the issuance of a building permit.*
- Construct a gentle 'hump' at the entrance/exit (along the entire width of each driveway) in order to prevent stormwater runoff from and onto Seaview Road and John McLean Drive. Suggested dimensions of the 'hump' would be a width of 6 feet and a height of 2-4 inches. Trench drains often are not desirable.*
- Curbing is required for the parking areas to control stormwater runoff.*
- Roof water runoff should not drain freely over the parking area or onto the surrounding property. Note that unconnected downspouts are not acceptable. We recommend piped connection to catch basins or alternative stormwater detention devices. Catch basins,*

per NRA specifications (available on our website at: <https://www.caymanroads.com/upload/files/4/628e6599be2c9.pdf>), are to be networked, please have the applicant provide locations of such wells along with details of depth and diameter prior to the issuance of any Building Permits.

- Sidewalk details need to be provided as per NRA specifications available on our website at <https://www.caymanroads.com/upload/files/3/Sidewalk%20&%20Curbing%20Details.pdf>

*At the inspection stage for obtaining a Certificate of Occupancy, the applicant shall demonstrate that the installed system will perform to the standard given. The National Roads Authority wishes to bring to the attention of the Planning Department that non-compliance with the above-noted stormwater requirements would cause a road encroachment under Section 16 (g) of The Roads Act (2005 Revision). For the purpose of this Act, Section 16(g) defines encroachment on a road as*

*"any artificial canal, conduit, pipe or raised structure from which any water or other liquid escapes on to any road which would not but for the existence of such canal, conduit, pipe or raised structure have done so, whether or not such canal, conduit, pipe or raised structure adjoins the said road;"*

*Failure in meeting these requirements will require immediate remedial measures by the applicant.*

## **Fire Department**

The Fire Department has approved the proposal.

## **APPLICANT'S LETTER**

*As part of the application submission for the 16-unit development on block 72C parcel 290, named Vista Colina, we would like the following to be considered seeks a variance, anticipates the Planner's CPA report, and addresses the NRA consultation response.*

### **Overview**

*The design and specification of the development aims to provide a mix of affordable housing options for young couples and families in the East End district.*

*The proposal conforms to the Development and Planning Regulations (2022 revision) with regards to lot size, lot width, setbacks, site coverage, height, unit density and parking provision.*

### **Variance**

*The development site is 1.123 ac/48,917.88 sq ft which Regulation 9(7)(c) permits 33 bedrooms based upon the lot size. The application seeks planning permission for 40 bedrooms.*

Consequently, members are asked to consider a request for one variance in relation to bedroom density under section 8(13)(b) of the Regulations and allow 40 bedrooms instead of the permitted 33 bedrooms. As part of CPA's consideration, we wish the following to be noted:

- (i) *The neighbourhood is residential in nature with a mix of development types and diverse architectural styles. The proposed residential development corresponds to the existing landform and is designed sympathetic to the existing streetscape.*
- (ii) *The character of the site terrain has proved challenging whereby the grade fluctuates from 2' Above Mean Sea Level (AMSL) at the Sea View Road end rising up to 28' AMSL and then plateauing at 26' AMSL on the northern John McLean Drive end. This has resulted in additional engineering features which impact on the project feasibility. In order to produce a viable scheme the development potential of the site has been maximised.*
- (iii) *The proposed development will not be detrimental to persons residing or working in the vicinity nor to the adjacent property. The scheme has been sited along the western boundary and orientated to minimise impact on the adjacent property.*
- (iv) *The impact of additional bedrooms is negligible. As members are aware, the significant factor when considering density relates to the number of units and the correlation to parking spaces. The number of units permissible, based on the lot size, is 22 and the application seeks permission for 16 units. This proposal provides a surplus of parking to support future residents.*
- (v) *Our proposal aligns with the provisions of Section 2.6 of the Development Plan 1997.*

*We trust the above demonstrates sufficient reason and exceptional circumstance to grant a variance for the bedroom density.*

#### Suitability

*Members are aware that Regulation 9(7) permits apartments and/or townhouses in suitable locations and the 1997 Development Plan provides the framework for assessing suitability through an objective, objectives and strategy.*

*Strategy 1.3(a) seeks to:*

*“accommodate the present and future population of the Cayman Islands to the best advantage having regard to the quality of life and the economic well-being of the people and to their individual requirements”*

*This section seeks to address the suitability of the development:*

- (i) *Enhancing community diversity and inclusivity*

*One of the primary objectives of this proposed development is to diversify housing options within the community building upon the choice of affordable housing options offered by NHDT as recently publicised [Housing trust applies to build more affordable homes in East End - Cayman Compass](#). The creation of a mix of apartment units is not only a response to the evolving housing needs of the area but an essential step towards fostering cohesive and inclusive communities. By offering a variety of housing choices, we aim to accommodate a wide range of residents, from young professionals to families*

*and seniors, thereby enriching the social fabric of the neighbourhood. Members are also invited to note the multi-unit development 1,000ft east of the application site.*

*(ii) Supporting services and infrastructure*

*Sufficient infrastructure serves the site (e.g. public road, water line, electrical service) and in the area (commercial retail, recreational sports, religious centres, grocery stores, etc.) to support the residents of the proposed townhouses, which also ensure future residents can integrate and contribute with the community.*

*(iii) Harmonising with surrounding character*

*In pursuit of architectural harmony and minimising cut and fill, our design approach deliberately splits the development into two separate blocks. This approach minimises the mass and scale of the buildings, preserving the existing landform and ensuring that our development seamlessly integrates with the neighbourhood's character. It is worth noting that the immediate vicinity contains multiple-family developments, further demonstrating to the appropriateness of our proposal within this context.*

*(iv) Preserving amenity for neighbouring properties*

*Respecting the enjoyment of amenity for neighbouring properties is of paramount importance. To this end, our development adheres to setback requirements, with the built form situated along the western boundary and balconies/outdoor seating areas orientated in a south-west direction. These design attributes contribute to minimising any potential impact on the amenity of neighbouring properties. Additionally, no objections have been raised by neighbouring properties, nor by any property within the 450-foot prescribed radius, further validating our commitment to preserving the neighbourhood's amenity.*

*NRA consultation response*

*NRA confirm, in their response, expected daily trips is considered to be minimal with 106 estimated across the entire development. This equates to 53 daily trips per entrance at the north and south of the site. Furthermore, members are invited to note the designated speed limit across the north and south of the site is 25 mph.*

*To alleviate NRA concerns an additional plan has been submitted which demonstrates the driveways do not align with those opposite.*

*Conclusion*

*We have addressed the variance request for increased bedroom density, demonstrated the suitability of the site, and considered traffic generated by the proposed development. Our commitment to harmonising with the existing community is evident in our design approach. The absence of objections from neighbouring property owners within the 450-foot radius underscores our project's minimal impact.*

*Vista Colina contributes to diversifying housing options for the East End community. We believe this proposal reflects the spirit of the Development Plan goals and Development and Planning Regulations, making it a suitable addition to the East End district.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The subject property is bordered by three streets in East End; specifically John McLean Drive, Skipwith Link, and Seaview Drive.

The subject property is presently vacant.

The proposal is for 16 townhouses with 30 bedrooms and 33 parking spaces.

### **Zoning**

The property is zoned Medium Density Residential.

### **Specific Issues**

#### **1) Suitability for Apartments**

There do not appear to be any existing apartments in the vicinity according to Cayman Land Information.

#### **2) Number of Bedrooms (40 vs 33)**

Regulation 9(7)(c) allows a maximum of 30 bedrooms per acre in the MDR zone. This translates into a maximum of 33 bedrooms for this property.

The applicant is proposing a total of 40 bedrooms.

The applicant has submitted a variance letter and the CPA should discuss whether a variance is warranted in this instance.

#### **2.20 ADRIAN & ORLEE EBANKS (TSC Architecture) Block 5C Parcel 244 (P23-0497) (\$780,000) (EJ)**

Application for duplex.

### **FACTS**

<i>Location</i>	Boggy Sand Road, West Bay
<i>Zoning</i>	<b>LDR (with Historic Overlay)</b>
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.29 ac. (12,632 sq. ft.)
<i>Parcel size required</i>	12,500 sq. ft.
<i>Current use</i>	Two-Houses
<i>Proposed building size</i>	3,120 sq. ft.
<i>Total building site coverage</i>	13.88%
<i>Required parking</i>	2
<i>Proposed parking</i>	2

### **BACKGROUND**

March 26, 2004 – Planning permission was granted for a house.



August 30, 2023 (**CPA/19/23; item 2.7**) – the application was adjourned for the Authority to give further consideration to the historical implications of the application.

November 8, 2023 (**CPA/26/23; item 2.29**) – the application was adjourned to invite in the applicant to discuss concerns with the visual appearance of the building in relation to the historic overlay.

December 13, 2023 (**CPA/30/23; item 2.1**) – the Authority adjourned the application in order to consult per 41(4) of NCA.

**Recommendation:** Discuss the application, **for the following reason:**

- 1) The visual appearance of the building in relation to the provisions of the historic overlay

### **AGENCY COMMENTS**

Comments from the Department of Environment are noted below.

#### **Department of Environment (July 26, 2023)**

*This review is provided by the Director of the Department of Environment (DoE) under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*

#### ***Site Overview***

*The subject parcel is man-modified, with an established traditional Caymanian house on the property. The subject parcel is also located across Boggy Sands Road from designated Critical Habitat under the Interim Directive for the designation of Critical Habitat of Green turtles (*Chelonia mydas*), Loggerhead turtles (*Caretta caretta*), Hawksbill turtles (*Eretmochelys imbricata*), Leatherback turtles (*Dermochelys coriacea*) and all other species that may occur in Cayman waters including Kemp's Ridley turtles (*Lepidochelys kempii*) and hybrids (2020) issued under section 17 (7) of the National Conservation Act (2013) (refer to Figure 1).*



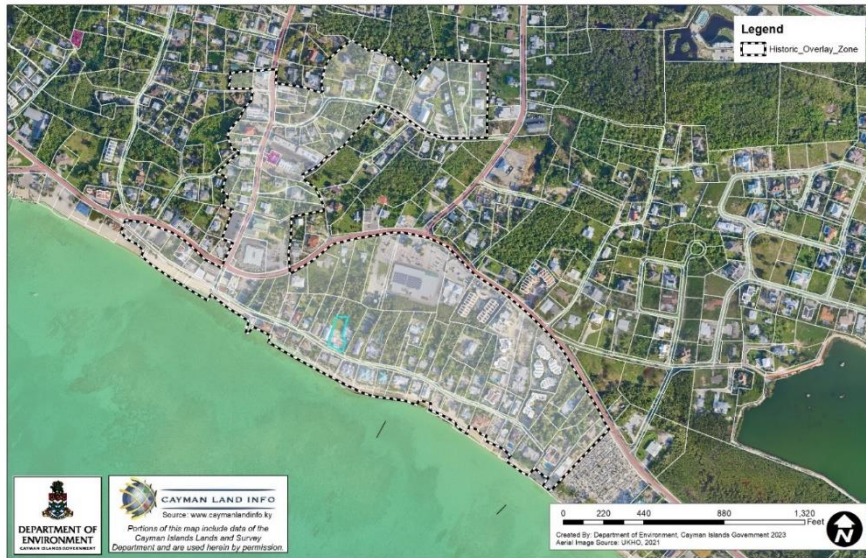


Figure 2. The location of the subject parcel (outlined in blue) within the limits of the Historic Overlay Zone (Aerial Imagery Source: UKHO, 2021).

*There is a traditional Caymanian house already located on the parcel, which the planning application drawings make no reference to. This property house is listed on the National Trust for the Cayman Islands' Heritage Register under WB 003-01 as Herbert Parson's House. It was constructed using ironwood stilts, shiplap timber and a zinc roof. The date of construction is not known although it appears to long pre-date any available aerial imagery for the area.*

*There is no reference to this existing house on the planning submission drawings, but it is clear from the application drawings that the existing buildings are incompatible with the proposed development and that it would be required to be demolished to accommodate the proposed duplex. The proposed development has no characteristics that would be in keeping with the established historical, architectural or cultural character of the area (refer to Figure 3). Heritage is finite, and to demolish this historic house for construction of the proposed duplex would be in direct contradiction to the intent and aims of the Historic Overlay Zone. The importance of protecting heritage assets was also reflected in the draft National Planning Framework, 2018.*





*Figure 3. Side by side comparison of the proposed duplex (left) with the existing traditional building on site (right). Note that the proposed duplex has no characteristics that are in keeping with the established historical, architectural or cultural character of the area (Source: Submitted plans, 2023 / DoE, 2023).*

The existing buildings are a good example of traditional Caymanian architecture and heritage on a road within a Historic Overlay Zone (refer to Figure 4).



*Figure 4. Aerial view of the subject parcel (Source: DoE, 2023)*

*The proposed development leaves a large area of space in the rear of the parcel. The historic house should remain in situ, visible from the road frontage and within its existing context, and the northern part of the parcel (away from Boggy Sand Road) could potentially accommodate additional sensitive development. The historic house should be preserved for the benefit of the community and the cultural heritage of the area.*



Figure 5. Proposed site plan overlaid on 2021 Aerial Imagery (Aerial Imagery Source: UKHO, 2021). Note that the footprint of the existing dwelling falls within the area of the proposed driveway / parking area.

### ***Recommendations***

*For reasons highlighted above, it would be inappropriate to approve the application at this time given that:*

- *The Central Planning Authority (CPA) has a duty to promote and encourage the preservation of historic buildings and conserve their historic architectural heritage within a Historic Overlay Zone. Therefore, the CPA has a duty to consider the heritage of the traditional Caymanian House (Herbert Parson's house).*
- *The CPA also has a duty to consider the proposed development in the context of the Historic Overlay Zone and the purpose of this zone under the Development and Planning Regulations.*
- *There is no mention of the fate of the existing house on the property in the application drawings, and no cover letter was provided.*

*In light of the above, the DoE recommends the following:*

- *We highly recommend that the applicant withdraws their application and takes the time to revisit the design for the proposed development to retain the historic properties and to propose a development in keeping with the unique characteristics and cultural heritage of the Historic Overlay Zone.*
- *Considerations for preservation of the existing historic buildings on site should be made.*

### **DIRECTED CONDITIONS**

*The site has the potential to impact Critical Habitat under the Interim Directive for the designation of Critical Habitat of Green turtles (*Chelonia mydas*), Loggerhead turtles*

(*Caretta caretta*), Hawksbill turtles (*Eretmochelys imbricata*), Leatherback turtles (*Dermochelys coriacea*) and all other species that may occur in Cayman waters including Kemp's Ridley turtles (*Lepidochelys kempii*) and hybrids (2020) issued under section 17 (7) of the National Conservation Act (2013)

Without appropriate controls, there would or would likely be an adverse effect on the designated sea turtle critical habitat, namely:

- Section 2(a) of the NCA: alterations that may impair the capacity of the area to function as a habitat beneficial to wildlife, and
- Section 2(j) alterations that may hinder or impede the movement or migration of wildlife.

On the basis of the above information, in the exercise of powers which have been conferred through express delegation by the National Conservation Council pursuant to section 3(13) of the National Conservation Act (2013), the Director of DoE **respectfully directs that the following conditions be imposed by the Central Planning Authority or Planning Department,** as part of any agreed proposed action for planning approval:

#### ***Prior to the Issuance of a Building Permit***

1. Prior to the issuance of a Building Permit, the applicant shall prepare and submit a plan for review and approval to the Department of Environment for turtle friendly lighting, which minimises the impacts on sea turtles. Guidance on developing a lighting plan can be found in the Department of Environment's Turtle Friendly Lighting: Technical Advice Note (September 2018) available from <https://doe.ky/marine/turtles/tfl/>. The DoE's written approval must be received by the Planning Department prior to the issuance of the Building Permit.

#### ***Prior to the Issuance of a Certificate of Occupancy***

2. Lighting and/or specifications for visible light transmittance shall be installed and maintained in accordance with the turtle friendly lighting plan which has been reviewed and approved by the Department of Environment. Once construction is complete, prior to the issuance of the Certificate of Occupancy, the Department of Environment will inspect the installed lighting for compliance with the approved turtle friendly lighting plan. Confirmation of the Department of Environment's written approval of the installed exterior lighting after the inspection must be received by the Planning Department prior to the issuance of the Certificate of Occupancy.

These conditions are directed to prevent the 'take' of sea turtles (Part I Schedule I species of the National Conservation Act) and adverse impacts on the critical habitat of sea turtles, which is defined in the Interim Directive for the designation of Critical Habitat of Green turtles (*Chelonia mydas*), Loggerhead turtles (*Caretta caretta*), Hawksbill turtles (*Eretmochelys imbricata*), Leatherback turtles (*Dermochelys coriacea*) and all other species that may occur in Cayman waters including Kemp's Ridley turtles (*Lepidochelys kempii*) (issued under Section 17 (7) of the National Conservation Act (2013)).

A person aggrieved by a decision of the National Conservation Council to impose a condition of approval may, within 21 days of the date on which the decision is received from the Central Planning Authority/Department of Planning, appeal against the decision



*of the Council to the Cabinet by serving on the Cabinet notice in writing of the intention to appeal and the grounds of the appeal (Section 39 of the National Conservation Act, 2013). We trust that this information will be relayed to the applicant in the Department of Planning's decision letter.*

### **APPLICANT'S LETTER**

*This letter is written on behalf of Adrian and Orlee; they recently applied to the department for a 2- story Duplex on the referenced property. The total square footage is 3120. As required, notices were sent by registered mail to all owners within an 80 feet radius on July 12th, 2023. They request side setback variance and would like the board's consideration.*

*As per section 8 (13) (b), (iii), there is sufficient reason to grant a side setback variance as exceptional circumstances exist, which may include the fact; the proposal will not be materially detrimental to persons residing or working in the vicinity to the adjacent property or the public welfare.*

### **PLANNING DEPARTMENT ANALYSIS**

#### **General**

The proposed duplex is located on Boggy Sand Road in West Bay.

#### **Zoning**

The property is zoned Low Density Residential.

#### **General**

The proposed duplex is located on Boggy Sand Road in West Bay.

#### **Zoning**

The property is zoned Low Density Residential.

#### **Specific Issues**

##### **1) Minimum Side Setbacks – 10'.0" vs 15'**

The proposed two-storey duplex is at 10' vs 15' which does not meet the Regulations 9 (8)(j) 10' for the side for multi-storey; therefore, the applicant is seeking side setback for both sides.

##### **2) Historic Overlay Zone –**

The proposal will cause the existing homes to be demolished, bearing in mind that some structures on the site existing as far back as the 1958 aerial maps and giving that the subject parcels is in a Historic Overlay Zone and regulations 9 (1) states that "in a Residential zone, the primary uses are residential and horticultural. Applicants for permission to effect any development in a Residential zone shall ensure that the massing, scale, proportion and design of such development is consistent with the **historic architectural traditions of the Islands.**

Additionally, regulations 16. (1) In an Historic Overlay zone, the Authority shall have a duty to promote and encourage the preservation of historic buildings and conserve their historic architectural heritage. (2) In considering any application for permission to develop within an Historic Overlay zone, the Authority shall, in its discretion, ensure that the development — (a) conforms to the traditional workmanship, design, scale, massing, form, materials, decoration, colour and methods of construction of the buildings and the location of windows and doors in them; and (b) in its setting, reflects the historic pattern of development in the Islands.

### **SUPPLEMENTARY ANALYSIS**

On December 13, 2023 (**CPA/30/23; item 2.1**) – the Authority adjourned the application in order to consult per 41(4) of NCA.

#### **Department of Environment (January 12, 2024)**

*On 4 January 2024, the Department of Environment (DoE), under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013 (NCA)), received a request for approval under Section 41(4) of the NCA from the Planning Department/Central Planning Authority prior to the granting of planning permission for the aforementioned project.*

*Under Section 41(5) of the NCA, in the exercise of powers which have been conferred through express delegation by the National Conservation Council, pursuant to section 3(13) of the National Conservation Act (2013) the Director of DoE, therefore, respectfully directs that the following conditions be imposed by the Central Planning Authority or Department of Planning, as part of any agreed proposed action for planning approval:*

#### ***Prior to the Issuance of a Building Permit***

- *Prior to the issuance of a Building Permit, the applicant shall prepare and submit a plan for review and approval to the Department of Environment for turtle friendly lighting, which minimises the impacts on sea turtles. Guidance on developing a lighting plan can be found in the Department of Environment's Turtle Friendly Lighting: Technical Advice Note (September 2018) available from <https://doe.ky/marine/turtles/tfl/>. The DoE's written approval must be received by the Planning Department prior to the issuance of the Building Permit.*

#### ***Prior to the Issuance of a Certificate of Occupancy***

- *Lighting and/or specifications for visible light transmittance shall be installed and maintained in accordance with the turtle friendly lighting plan which has been reviewed and approved by the Department of Environment. Once construction is complete, prior to the issuance of the Certificate of Occupancy, the Department of Environment will inspect the installed lighting for compliance with the approved turtle friendly lighting plan. Confirmation of the Department of Environment's written approval of the installed exterior lighting after the inspection must be received by the Planning Department prior to the issuance of the Certificate of Occupancy.*

*These conditions are directed to prevent the ‘take’ of sea turtles (Part 1 Schedule 1 species of the National Conservation Act) and adverse impacts on the critical habitat of sea turtles, which is defined in the Interim Directive for the designation of Critical Habitat of Green turtles (Chelonia mydas), Loggerhead turtles (Caretta caretta), Hawksbill turtles (Eretmochelys imbricata), Leatherback turtles (Dermochelys coriacea) and all other species that may occur in Cayman waters including Kemp’s Ridley turtles (Lepidochelys kempii) (issued under Section 17 (7) of the National Conservation Act (2013)).*

*A person aggrieved by a decision of the National Conservation Council to impose a condition of approval may, within 21 days of the date on which the decision is received from the Central Planning Authority/Department of Planning, appeal against the decision of the Council to the Cabinet by serving on the Cabinet notice in writing of the intention to appeal and the grounds of the appeal (Section 39 of the National Conservation Act, 2013). We trust that this information will be relayed to the applicant in the Department of Planning’s decision letter.*

## **2.21 RONALD BOLT Block 71A Parcel 59 (P23-1085) (\$5,000) (NP)**

Application for land clearing.

### **FACTS**

<i>Location</i>	Right of Way to Farm Road, East End
<i>Zoning</i>	<b>Agricultural/ Residential</b>
<i>Notification Results</i>	No Objections
<i>Parcel size</i>	4.25 acres
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Vacant
<i>Proposed use</i>	None at this time

**Recommendation:** Discuss the application to clear land by mechanical means.

### **AGENCY COMMENTS**

Comments from the DOE are noted below:

#### **Department of Environment (January 18, 2024)**

*This review is provided by the Director of the Department of Environment under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).*

#### ***Site Overview***

*The application site consists of primary dry shrubland and dry forest, is over the East End Fresh Water Lens, and is located in the area that has been designated as the East End*

*Forest. Primary habitat is mature habitat in its natural state, otherwise uninfluenced by human activities where ecological processes are not significantly disturbed. These habitats are often very old, existing long before humans, and may consist of many endemic and ecologically important species. Primary habitat is in severe decline and is becoming a scarce and highly threatened resource as a result of land conversion for human uses. The East End Forest is considered to be highly biodiverse as it is one of the last standing old-growth forests on the islands.*

### **General Comments**

*One of the biggest threats to biodiversity is how we use our natural resources. The practice of converting prime agricultural land into residential or commercial uses. As more farmland is lost to residential and commercial developments, farmers are forced to seek out other land on which to raise livestock and grow crops. This typically results in the conversion of further primary habitat to agricultural land, which then may also later be converted to residential and commercial land, perpetuating the cycle. Often, the primary habitat which is clear cut is not as suitable for farming as the land that was lost. Historically, there was a tendency for areas most suitable for farming to be farmed and the areas unsuitable for farming were left alone (and remain as primary habitat). The clearing clear-cutting of primary habitat and the disregard for regenerative agriculture is concerning, along with the heavy use of fertilizer and pesticides (which can also eradicate native pollinators).*

*Primary habitat is the most valuable, as it has the highest biodiversity value and is irreplaceable within the scale of a human lifespan. Transformation of primary habitat can disrupt local ecosystems and exacerbate issues such as soil erosion and water pollution. This is of particular concern given the location of the property above the water lens. The conversion of primary habitat to agricultural land use often leads to environmental degradation. However, agriculture, when practiced sustainably, can assist with the preservation of natural habitats, support biodiversity, and help to mitigate the negative effects of climate change through practices such as retaining existing native vegetation, using land that is not of primary habitat and soil conservation. Therefore, the DoE and the National Conservation Council have been advocating against converting primary habitat to agricultural lands especially when there are man-modified areas available.*

### **Advice to Applicant**

*Sustainable farming can include ways of retaining and incorporating native vegetation in their farming practices such as mixing native trees and shrubs in their operations they can provide shade and shelter that protects their crops and livestock. In addition, retaining native vegetation around crops can help control erosion, reduce nutrient runoff, and support pollinators as well as retain some biodiversity in general. Therefore, it is recommended not to completely clear-cut the site but to incorporate and retain some native vegetation in the farming operation schematics.*

### ***Advice for the Central Planning Authority/Planning Department***

*There are some international treaties/frameworks that have been designed to address climate change and the loss of biodiversity such as the Kunming-Montreal Global Biodiversity framework which aims to halt and reverse biodiversity loss by 2030. There are also the United Nations Sustainable Development Goals (SDGs) which tie into the Kunming-Montreal Global Biodiversity framework. Two of the SDGs (Goal 2 and 12) are linked to sustainable agriculture, by focusing on achieving food security, improved nutrition, and promoting sustainable agriculture as well as ensuring sustainable consumption and production patterns. These complement the Cayman Islands Food and Nutrition Security Policy as that policy also looks to promote sustainable agriculture.*

*As a country, we should be working towards conserving biodiversity, promoting sustainable agriculture, and ensuring that development in general does not result in the unnecessary loss of biodiversity and ecosystem services that are needed to maintain our quality of life. Therefore, good agricultural land should be protected from conversion into other uses and there should be a demonstrated need to convert primary habitat into agricultural land and a process to ensure it is suitable for farming. If the CPA or the Planning Department is of the view that there need for this conversion, then sustainable agriculture practices should be implemented and mature native vegetation be incorporated into the farming operations.*

### **APPLICANT'S LETTER**

*The type of farming to be undertaken will be commercial.*

*Which includes livestock, poultry, vegetation and ground provisions.*

### **PLANNING DEPARTMENT ANALYSIS**

#### **General**

The subject property is located on a right of way from Farm Road in East End.

The property is presently vacant.

The applicant is seeking permission to clear the land by mechanical means for farming purposes.

#### **Zoning**

The property is zoned Agricultural/Residential.

#### **Specific Issue**

##### **1) Nature of the application**

Discuss the request to clear the lands for farming purposes.



**2.22 JUDY MOLINA (Shoreline Construction Ltd) Block 75A Parcel 355 (P23-0585) (\$100,000.00) (EJ)**

Application for one-bedroom house and storage building.

**FACTS**

<i>Location</i>	Off John McLean Drive in East End
<i>Zoning</i>	<b>LDR</b>
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.3797 ac. (16,461 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Vacant
<i>Proposed building size</i>	298.82 sq. ft.
<i>Total building site coverage</i>	1.81%
<i>Allowable units</i>	1
<i>Proposed units</i>	1
<i>Required parking</i>	1
<i>Proposed parking</i>	3

**Recommendation:** Discuss the application, for the following reasons:

- 1) Rear setback (10' vs 20')
- 2) Side setback (9'7" vs 10')

**APPLICANT'S LETTER**

*Further to the submitted application of a ATF house on Block 75A Parcel 355, JMP Construction requests a variance on the rear setback from 20' to 12' to the property line.*

*We request permission for the subject matter per the drawings provided and humbly give the following reasons:*

- 1- Per section 8(13)(b)(iii) of the Planning Regulations, the proposal will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighborhood, or to the public welfare;*
- 2- Per section 8(13)(d) of the Planning Regulations, the adjoining property owners have been notified of the lesser setback to the Strata line associated with the application and they have not objected.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The proposed one-bedroom house is located off John McLean Drive in East End.

### **Zoning**

The property is zoned Low Density Residential.

### **Specific Issues**

#### **1) Minimum Rear Setbacks –**

The applicant is seeking permission for the proposed one-bedroom house with storage; however, the proposed is at 12' vs 20' from the rear boundary therefore not meeting regulations 9 (8)(i).

#### **2) Minimum Side Setbacks –**

Additionally, the proposed does not meet the required side setback, proposed at 9'.7" vs 10' from the right-side boundary, therefore not meeting regulations 9 (8)(j); consequently, the applicant is seeking a side and rear setback variance from the authority.

The Department is of the opinion that the proposed could better be designed and rearranged on site in order to meet the required side and rear setbacks. Nevertheless, the applicant has notified the adjacent parcels and the department is not in receipt of any objections.

## **2.23 LUIS REGO RIVERS (AE Designs) Block 4B Parcel 666 (P23-0865) (\$70,000) (NP)**

Application for after the fact house additions.

### **FACTS**

<i>Location</i>	Petunia Close in West Bay
<i>Zoning</i>	<b>High Density Residential</b>
<i>Parcel size required</i>	5,000 sq. ft.
<i>Parcel size proposed</i>	9,426.4 sq. ft.
<i>Current use</i>	House

**Recommendation:** Discuss the application, for the following reasons:

- 1) The after the fact nature of the application
- 2) Rear Setback (11'9" vs 20')
- 3) Side Setback (2'1" vs 10')

## **APPLICANT'S LETTER**

*I am writing on behalf of my client, Mr. Luis Rivers, to address an inadvertent setback encroachment issue on the above-mentioned Property. Upon thorough inspection, it has come to our attention that the house addition on the left side of the property was constructed at a setback of 3 feet, deviating from the planning regulations requiring a setback of 10 feet on the side. Additionally, there is a setback encroachment at the rear of the property, where the setback has been reduced from 20 feet to 11 feet.*

*We want to express our sincere apologies for any oversight in failing to adhere to the planning regulations and setback requirements. Mr. Luis Rivers was not aware of these specific regulations at the time of the construction, and we fully understand and appreciate the importance of compliance with city planning standards.*

*To rectify this situation, my client is committed to addressing setback encroachments promptly and professionally by following all the planning department processes. Luis has hired an architect to assist in the preparation of all necessary planning drawings that accurately depict the current structure and proposed modifications to align with the setback regulations as deemed necessary.*

*Furthermore, I would like to highlight that Luis has taken proactive steps to reach out to neighboring property owners to seek their permission for the setback extension. We are pleased to report that after discussing the matter with adjacent property owners, we have received their consent, and they have no objections to the after-the-fact house addition and side encroachment.*

*We understand the significance of obtaining the necessary approvals, and my client Luis is eager to collaborate with the planning department throughout this process. We are fully prepared to provide comprehensive documentation, including any information required for your review, to ensure a thorough assessment of the variance request.*

*We kindly request your consideration for this variance and let us know if any additional documentation should be necessary for successful approval of this application. Mr. Luis is committed to working closely with his Architect and planning department to ensure that all necessary steps are taken to bring the property into compliance.*

*We deeply regret any inconvenience this oversight may have caused and appreciate your understanding and cooperation in this matter. If there are any meetings or hearings scheduled to discuss this variance request,*

*Mr. Luis and myself "Architect" are eager to participate and provide any additional information deemed necessary for a thorough review.*

*Thank you for your time and attention to this matter.*

*We look forward to your guidance and assistance in resolving the setback encroachment issue promptly and receiving your consideration and variance approval.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The subject parcel is located on Petunia Close in West Bay.

The property contains a house with two after the fact additions; a house addition (567 square feet) and a covered patio area (228 square feet).

### **Zoning**

The property is zoned High Density Residential.

### **Specific Issues**

#### **1) After the fact nature of the application**

The two after the fact additions to the property have existed for less than five years

#### **2) Side Setback (2' vs 10')**

There is an after the fact covered area that has been added to the structure consisting of 222 square feet. The structure has a 2 foot setback whereas the Regulations require 20 feet (Regulation 9(6)(i)).

The applicant has submitted a variance letter and the Authority should consider whether a variance is warranted in this instance.

#### **3) Rear Setback (11'9" vs 20')**

Regulation 9(6)(h) requires a minimum 20 foot side setback for a one storey structure.

There is a 567 square foot house addition that has been added to the rear of the property with an 11'9" setback.

The applicant has submitted a variance letter and the Authority should consider whether a variance is warranted in this instance.

#### **2.24 JASON EBANKS (TSC Architecture) Block 43D Parcel 25 (P23-0945) (\$12,000) (NP)**

Application for a wall.

### **FACTS**

<i>Location</i>	Lakeview Drive, Bodden Town
<i>Zoning</i>	<b>Low Density Residential</b>
<i>Notification result</i>	Not Required
<i>Current use</i>	Three townhouses

### **BACKGROUND**

March 16, 2022 (**CPA/8/22; Item 2.5**) – The Authority resolved to grant planning permission for three townhouses. P21-1083.

January 26, 2023 (**Administrative Approval**) – Permission was granted to shift the entire building to the east. P22-1171.

**Recommendation:** Discuss the application for the following reason:

1) Wall setback from road edge

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The subject parcel is located on Lakeview Drive in Bodden Town.

The property contains three existing townhouses.

The applicant is seeking planning permission for a 3 foot high concrete wall along the side and rear boundaries.

### **Zoning**

The property is zoned Low Density Residential.

### **Specific Issues**

#### **1) Location of wall in relation to Lakeview Drive**

Regulation 8(18) states that walls and fences adjacent to a road shall be setback a minimum of four feet from the roadside parcel boundary.

In this instance the roadside parcel boundary extends into the physical limits of Lakeview Drive. For this reason, the CPA did not require a sidewalk to be constructed when approval was granted for the three townhouses. The proposed location of the wall would be along the road edge, not the road side parcel boundary.

The Authority should determine if the proposed wall location is acceptable in this instance.

## **2.25 JAMES MILLER (3D Kyube) Block 38B Parcel 169 (P23-0277) (\$10,000) (NP)**

Application for after the fact storage shed

### **FACTS**

<i>Location</i>	Firefly Close, Lower Valley
<i>Zoning</i>	<b>Low Density Residential</b>
<i>Notification result</i>	Not Applicable
<i>Parcel size proposed</i>	1.0 acre
<i>Parcel size required</i>	10,000 square feet
<i>Current use</i>	Vacant



## **BACKGROUND**

January 3, 2024 (CPA/01/23; Item 2.10) – The Authority resolved to grant planning permission for 4 townhouses (P23-0909).

January 17, 2024 (CPA/03/24; Item 2.13) – The Authority resolved to adjourn the application in order to clarify the use of the container.

**Recommendation:** Discuss the application for the following reason:

- 1) Applicant's stated reasons for the use of the structure.

## **APPLICANT'S LETTER**

*The container is used for storage of tools chemicals and ground provisions*

*Wheel barrel shovels etc*

*Sprays fertilizer bags of soils*

*Plantain bananas sweet potatoes and fruit*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The subject parcel is located on Firefly Close in Lower Valley.

The property presently contains a 575 square foot shed on the property, consisting of a 40 foot container and an addition (175 square feet) to the container.

It is noted that the application stated that the structure would be used as a site office but upon discussions with the agent, the use was confirmed as a storage shed.

It is also noted that the 2023 aerial photos revealed that this is an after the fact application and not a proposed structure.

### **Zoning**

The property is zoned Low Density Residential.

### **Specific Issues**

#### **1) Suitability of container**

As noted above, the applicant initially applied for the container as a site office, presumably for the 4 townhouses recently approved. The applicant has now indicated they wish to use the container as a permanent shed. The Authority needs to determine if the use of the container is suitable in this instance and that the visual appearance is acceptable.

## **SUPPLEMENTARY ANALYSIS**

The applicant has submitted a letter outlining the use of the existing shed.

The Authority should consider the stated use of the storage building.

**2.26 JOHN ALLEN (Rock Architecture) Block 27D Parcel 461 (P23-1004) (\$10,000) (NP)**

Application for a shed addition.

**FACTS**

<i>Location</i>	Hirts Road, Savannah
<i>Zoning</i>	<b>Low Density Residential</b>
<i>Notification result</i>	Not Applicable
<i>Parcel size proposed</i>	10,807.2 square feet
<i>Parcel size required</i>	10,000 square feet
<i>Current use</i>	House & Shed Foundation

**BACKGROUND**

October 14, 2020 (**CPA/17/20; Item 2.10**) – Planning permission was granted for a 456 square foot shed on the property. (P21-0219)

**Recommendation:** Discuss the application for the following reason:

- 1) Size of the shed

**APPLICANT'S LETTER**

*See Trade & Business License attached. The client initially needed the storage space as a necessity for their everyday living and household activities, maintenance, etc. The client is currently between locations for their business and will need a safe interior space to store dry goods while they find and possibly fit out their new business location. No gasoline, oils, coolants or anything of this nature will be stored in the proposed extended storage space.*

**PLANNING DEPARTMENT ANALYSIS**

**General**

The subject parcel is located on Hirst Road in Savannah.

The property presently contains a dwelling and a shed foundation in the rear.

The application is for a 360 square foot addition to the previously approved 456 square foot shed.

**Zoning**

The property is zoned Low Density Residential.

**2.27 MONICA WHITTAKER (Duro Architecture and Design) Block 27C Parcel 625 (P21-0199) (\$100,000) (AS)**

Application for an addition to a house to create a duplex.

**FACTS**

<i>Location</i>	Windward Rd
<i>Zoning</i>	LDR
<i>Notification results</i>	No objections
<i>Parcel Size</i>	.2298 AC (10,010 sq. ft.)
<i>Current Use</i>	Vacant
<i>Proposed footprint</i>	2,934 sq ft
<i>Bldg Size</i>	3,657 sq ft
<i>Site Coverage</i>	29.3%

**Recommendation:** Discuss the application for the following reasons:

- 1) Minimum lot size (10,010 sq ft vs 12,500 sq ft)
- 2) Minimum side setback (10'10" vs 15')

**APPLICANT'S LETTER #**

*With respect to our submission for additon to existng single-story house to create a duplex on a 0.23 ac Lot in a Low Density Residential Zone (LDR), Block 27C Parcel 265 located on Winward Road in Newlands, Grand Cayman. We hereby request variances as follows:*

- 1. Minimum Lot Size Variance - Proposed at 0.23 ac Minimum at 0.25 ac*
- 2. Side Setback Variance - Proposed at 10 feet from min 15 feet required*

*In making the application for such a variance, our client is mindful of provisions of Regulations 8(13) of the Development and Planning Regulations, and would submit that there is sufficient reason and exceptional circumstances that would permit such setback allowance, in that:*

- (i) The characteristics of the proposed development are consistent with the character of the surrounding area.*
- (ii) The proposed structures will not be materially detrimental to persons residing in the vicinity, to the adjacent properties, or to the neighbouring public welfare.*

*Per Section 8(13) of the Regula0on, the adjacent properties were notified by registered mail and there have been no objections to date.*

*We thank you for your consideration of this matter and look forward to a favourable decision on this application in due course.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for a two (2) storey, two (2) bedroom addition to a house to create a duplex.

### **Zoning**

The property is zoned Low Density Residential.

### **Specific Issues**

#### **1) Lot size**

Pursuant to Section 9 (8) (e) of the Development and Planning Regulations (2022 Revision) the minimum lot size for a duplex is 12,500 sq ft. The subject parcel is .2298 acres (10,010 sq ft).

#### **2) Side setback**

Pursuant to Section 9 (8) (j) of the Development and Planning Regulations (2022 Revision) the minimum side setback is 15 ft for a building more than one (1) storey. The proposed side setback is 10 ft 10 in.

#### **2.28 RONALD DAVIS (DDL Studio Ltd.) Block 33B Parcel 105 (P23-1050) (MW)**

Application for a 3'-10" concrete boundary fence with 3'-4" high sliding gate & 3 sq. ft. sign.

### **FACTS**

<i>Location</i>	Sand Point Rd., North Side
<i>Zoning</i>	<b>Low Density Residential</b>
<i>Notification result</i>	No objections
<i>Parcel size proposed</i>	0.35 ac. (15,246 sq. ft.)
<i>Current use</i>	Existing residence

### **BACKGROUND**

August 14, 2019 – House addition & pool (CPA/17/19; Item 2.13- the application was considered and it was resolved to grant planning permission.

**Recommendation:** Discuss the application, **for the following reasons:**

- 1) Fence roadside setback (0'-0" vs. 4'-0")
- 2) Gate roadside setback (1'-9" vs. 12'-0")

## **AGENCY COMMENTS**

Comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment are noted below.

### **Department of Environment (17-1-24)**

*This review is provided by the Director of the Department of Environment under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013). The Department of Environment confirms that we have no comments at this time.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for a 3'-10" concrete boundary fence with 3'-4" high sliding gate & 3 sq. ft. sign to be located on Sand Point Rd., North Side.

### **Zoning**

The property is zoned Low Density Residential.

### **Specific Issues**

#### **1) Fence roadside setback**

Regulation 8(18) of The Development and Planning Regulations (2022 Revisions) states “*walls and fences adjacent to a road shall be setback a minimum of 4 feet from the roadside parcel boundary, and vehicular gates adjacent to a road shall be setback a minimum of 12' from the roadside parcel boundary*” - The proposed 3'-10" fronting concrete wall would be setback approximately 0'-0" from the edge of Sand Point Rd. which would be a difference of 4'-0" respectively.

#### **2) Gate roadside setback**

Regulation 8(18) of The Development and Planning Regulations (2022 Revisions) states “*walls and fences adjacent to a road shall be setback a minimum of 4 feet from the roadside parcel boundary, and vehicular gates adjacent to a road shall be setback a minimum of 12' from the roadside parcel boundary*” - The proposed 3'-4" sliding gate would be setback approximately 1'-9" from the edge of Sand Point Rd. which would be a difference of 10'-3" respectively.

The Authority should assess if there is sufficient reason and an exceptional circumstance that exists to warrant granting planning permission for the proposed fence & sliding gate setback.

**2.29 CASEY GILL Block 15E Parcel 41 (P23-0662) (\$17,800) (AS)**

Application for a 6' concrete block wall to replace a chain link fence.

**FACTS**

<i>Location</i>	Stonewall Dr
<i>Zoning</i>	<b>LDR</b>
<i>Parcel Size</i>	.25 AC (10,890 sq. ft.)
<i>Current Use</i>	Residential

**BACKGROUND**

October 11, 2023 (**CPA/24/23; item 2.7**) – the application was adjourned to invite the applicant to appear before the Authority to discuss concerns regarding the comments from the National Roads Authority and non- compliance with Regulation 8(18).

**Recommendation:** Discuss the application for the following reason:

- 1) Height of wall

**AGENCY COMMENTS**

**National Roads Authority**

*“General Issues*

*1. Lands and Survey aerial imagery suggests that the existing fence may be encroaching in the road by about four (4) feet.*

*2. Per Regulation 8 (18) of the Development and Planning Regulations (2022 Revision), “Walls and fences adjacent to a road shall be setback a minimum of four feet from the roadside parcel boundary, and vehicular gates adjacent to a road shall be setback a minimum of twelve feet from the roadside parcel boundary.”*

*3. Per section 4.6.3 of the Design and Construction Specifications for Subdivision Roads & Property Development, “The minimum stopping sight distance, for horizontal alignment, along residential access roads shall be seventy-five feet (75') as measured between two (2) points on the centre of any lane and 3.5 feet above the carriageway as shown below.*

*The NRA therefore requests that the CPA have the applicant (1) remove the exiting fence as it is encroaching on Stone Wall Drive, and (2) revise the layout of the proposed wall so as to be compliant with Regulation 8 (18) of the Development and Planning Regulations (2022 Revision) and section 4.6.3 of the Design and Construction Specifications for Subdivision Roads & Property Development as shown above.”*



## **APPLICANT'S LETTERS**

### **Letter #1**

*Please accept our application to replace an existing chain link fence along our property boundaries with a 6' concrete wall. The fence was erected when our house was built in the 1980s. Due to its age, it is time for it to be replaced. We wish to install a higher solid wall in order to provide us greater privacy from our neighbours who spend a lot of time outdoors and from a driveway that runs along our rear boundary. We wish to maintain the fence's location along Stonewall Drive, as the existing fence was constructed with a concrete base and we don't wish to tear it out. The photos on the following pages show our existing fence along the road as well as the placement of our neighbours fences along Stonewall Drive, all of which have existed for several years."*

### **Letter #2**

*As mentioned in their letter, Casey and Yvonne wish to replace their existing chain link fence with a concrete wall and utilize the existing footing. They do not want to set the wall back 4' as is typically required. In their submission, photos are provided showing that all along Stonewall Drive's south boundary, their neighbours also have fences without any roadside setback. They do understand that their request will require CPA consideration and request CPA review the plans as submitted, accompanied by their letter and photographs.*

### **Letter #3**

*Yvonne & Casey reviewed NRA's comments on their application and wish CPA to consider that all the other fences along Stonewall Drive must also lie within the public right-of-way as they have for years, although not encroaching the paved edge.*

*They reiterate they simply wish to install a newer fence in the same location as their existing fence and would appreciate that their application move forward to CPA for consideration as submitted.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for 6 ft concrete block wall to replace an existing chain link fence at Stonewall

Drive. The applicant wishes to use the existing roadside footing, but the NRA suggests that the existing chain link fence encroaches into the road reserve by 4 ft. The applicant has submitted photos to show that an adjacent parcel owner's fence is aligned with the existing chain link fence.

Per Regulation 8 (18) of the Development and Planning Regulations (2022 Revision), "Walls and fences adjacent to a road shall be setback a minimum of four feet from the roadside parcel boundary, and vehicular gates adjacent to a road shall be setback a minimum of twelve feet from the roadside parcel boundary.

## **Zoning**

The property is zoned low density residential.

## **Specific Issues**

### **1) Roadside setback**

Per Regulation 8 (18) of the Development and Planning Regulations (2022 Revision), “Walls and fences adjacent to a road shall be setback a minimum of four feet from the roadside parcel boundary, and vehicular gates adjacent to a road shall be setback a minimum of twelve feet from the roadside parcel boundary.”

The applicant wishes to use the existing roadside footing which appears to be outside of the property boundary into the public road reserve. The applicant has submitted letters and photographs to address this setback issue.

### **2) Height of wall**

The proposed 6’ wall height is not typically supported by the Authority in residential areas, especially along the road side property boundary. The Authority needs to determine of the wall height would be appropriate in this instance.

## **SUPPLEMENTARY ANALYSIS**

The application has been updated to request a 6 ft wall along the east and rear boundaries only. The existing fencing along the road and west boundaries will remain unchanged.

## **2.30 NATIONAL HOUSING DEVELOPMENT TRUST (Whittaker & Walter) Block 72B Parcel 185 (P23-0807)(\$144,000) (JS)**

Application for a house.

### **FACTS**

<i>Location</i>	Marvelle McLaughlin Drive, East End
<i>Zoning</i>	<b>Medium Density residential</b>
<i>Notification result</i>	No objection
<i>Parcel size proposed</i>	0.1107 ac.
<i>Parcel size required</i>	4,822 sq. ft.
<i>Current use</i>	Proposed 3-bedroom house
<i>Proposed building size</i>	1200 sq. ft
<i>Total building site coverage</i>	24.89%
<i>Required parking</i>	1
<i>Proposed parking</i>	1

**Recommendation:** Discuss the application, for the following reason:

- 1) Rear setback (8'10" vs 20')
- 2) Side setback (9'1" vs 10')

### **APPLICANT'S LETTER**

*On behalf of my client, I would like to request a side and rear setback variance. The house will be over the left*

*setback line by 11" and 2'-10" on the rear setback line. There is sufficient reason to grant a variance and an*

*exceptional circumstance exists, which may include the fact that the characteristics of the proposed*

*development are consistent with the character of the surrounding area.*

*We are looking forward for your good office for consideration and approval of the variance request.*

### **AGENCY COMMENTS**

Comments from the Department of Environment are provided below.

#### **Department of Environment**

*As seen in Figure 1, the application site is man-modified. It appears that the site was cleared between 2018 and 2021 because the site was shown as cleared and filled in the 2021 aerial imagery but vegetated in the 2018 imagery (see Figure 2 below).*



*Figure 1. The application site in 2021 with the parcel boundary highlighted in blue (Aerial Imagery Source: UKHO, 2021).*



*Figure 2. The application site in 2018 with the parcel boundary highlighted in blue (Aerial Imagery Source: Cayman Land Info, 2018).*

*We do not have records for planning permission for the clearing, and the DoE does not support speculative clearing. We recommend that applications for land clearing are presented along with the development proposal so that appropriate mitigation measures can be recommended, as there may be varying recommendations depending on the form and nature of the development being proposed. Clearing the site prematurely takes away the opportunity for the DoE to make meaningful comments. It also removes the choice to retain native vegetation for use within the future development.*

*In this case, there is now no opportunity for the future residents of the proposed house to retain native vegetation. Retaining native vegetation is especially important for affordable housing developments as native vegetation is free, low-maintenance landscaping already provided by the environment. As seen in Figure 1, many of the properties on the adjacent parcels do not have much landscaping and the exposed marl fill reduces the ease of planting and increases the cost of landscaping. Native plants are best suited for the conditions of the site, including the temperature and amount of rainfall. They are climate-appropriate and require less maintenance and irrigation. Landscaping with native vegetation also provides ecological benefits by creating habitat and food for native fauna*

*such as birds and butterflies, promoting biodiversity and providing valuable ecosystem services.*

*The applicant may wish to consider the use of porous or permeable paved surfaces in areas of hardstanding, such as the proposed driveway and parking area, to allow rainwater infiltration and help manage the impacts of stormwater run-off.*

**Advice to the Central Planning Authority/Planning Department**

*Best management practices should be adhered to during construction to reduce impacts on the environment. In particular, control measures should be put in place to address pollution from expanded polystyrene (EPS) beads on construction sites, for example, those used in insulating concrete forms (ICF). Polystyrene is not biodegradable, and the EPS beads can be consumed by wildlife when it enters the food chain. These beads are very difficult to remove once they enter the environment and they do not naturally break down.*

*If the Central Planning Authority or Planning Department is minded to grant planning permission for the proposed development, we recommend the inclusion of the following condition in the approval:*

- 1. If the construction uses insulating concrete forms (ICFs) or other polystyrene materials, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas or pollute the environment.*

**PLANNING DEPARTMENT ANALYSIS**

**General**

The application site is located on Marvelle McLaughlin Drive, East End.

The application is for the construction of a (3) bedroom house.

**Zoning**

The property is zoned Medium Density residential

**Specific Issues**

Regulation 9(8)(i) and (j) requires that the minimum front and rear setbacks are 20ft and the minimum side setback is 10ft respectively. In this instance the applicant is proposing: rear setback (8'10" vs 20') and side setback (9'1" vs 10').

**2.31 MATTHEW R GOUCKE. Block 17A Parcel 17 (P23-0598) (\$4,500,000) (AS)**

Application for a house, pool & wall.

**FACTS**

<i>Location</i>	Daum Quay
<i>Zoning</i>	LDR
<i>Notification result</i>	No objections



<i>Parcel Size</i>	.3517 AC (15,320 sq. ft.)
<i>Current Use:</i>	Vacant
<i>Building Footprint:</i>	4,585 sq ft
<i>Building Area:</i>	9,614 sq ft
<i>Site Coverage:</i>	29.9%

**Recommendation:** Discuss the application for the following reason:

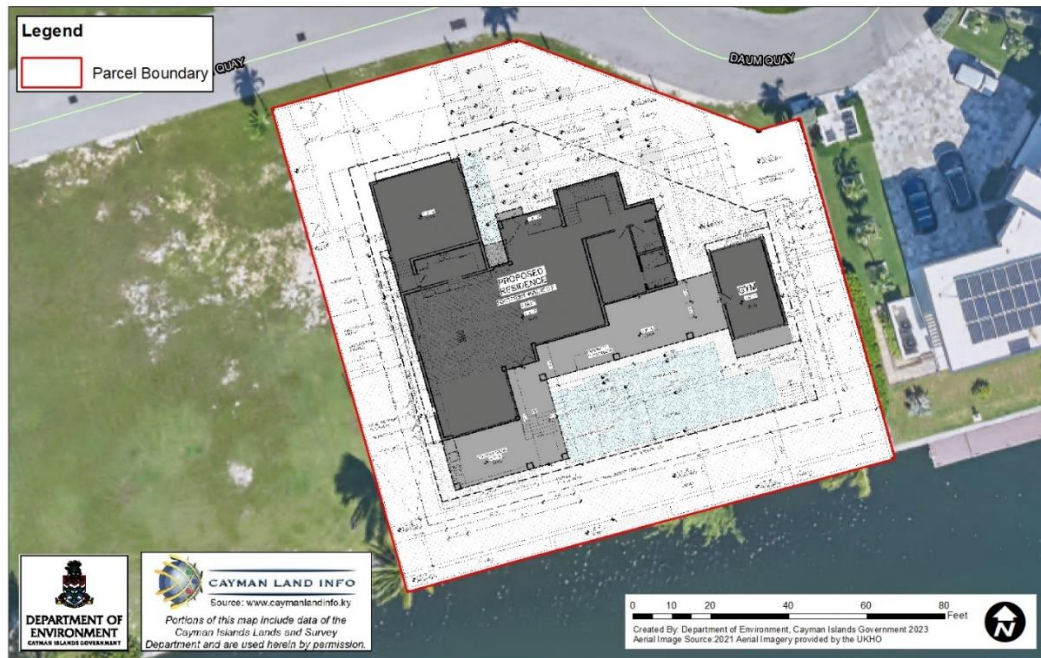
- 1) Front setback for garden stairs (7'7" vs 20')

### **AGENCY COMMENTS**

Comments were received from the Department of Environment.

#### **Department of Environment**

*The application site is man-modified and of limited ecological value (Figure 1). We recommend that native plants are incorporated into the landscaping scheme. Native plants are best suited for the conditions of the site, including the temperature and amount of rainfall. They are climate-appropriate and require less maintenance and irrigation. Landscaping with native vegetation also provides ecological benefits by creating habitat and food for native fauna such as birds and butterflies, promoting biodiversity and providing valuable ecosystem services.*





*Figure 1. Proposed development site with the parcel boundary highlighted in red (Aerial Imagery Source: UKHO, 2021).*

*Best management practices should be adhered to during construction to reduce impacts on the environment. In particular control measures should be put in place to address pollution from expanded polystyrene (EPS) beads on construction sites, for example those used in insulating concrete forms (ICF). Polystyrene is not biodegradable, and the EPS beads can be consumed by wildlife when it enters the food chain. These beads are very difficult to remove once they enter the environment and they do not naturally break down.*

*If the Central Planning Authority or Planning Department is minded to grant planning permission for the proposed development, we recommend the inclusion of the following conditions in the approval:*

- 1. All construction materials shall be stockpiled at a minimum of 20 feet from the canal edge to reduce the possibility of run-off washing material and debris into the canal causing turbidity and impacting water quality.*
- 2. If the construction uses insulating concrete forms (ICFs) or other polystyrene materials, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene."*

### **APPLICANT'S LETTER**

*We would be grateful for your consideration in respect to the following planning variance in accordance with the Development and Planning Regulations Clause 8(711a,b,e), which relates to our client's proposed front boundary setback (Steps) for Residence in LDR zoning. Please note the below variance request.*

- 1 Front Boundary Setback Variance for Residence - (Encroaching by Maximum 7 6')*

*Our client requests a front boundary setback variance to develop a residence located on a canal Not due to the following reason:*

- a. The site's average elevation above mean sea level (MSL) stands at 3 feet, while the minimum ground floor level (MSL) mandated by Planning Laws for a waterfront (canal) project is set at 7 feet. In line with current Planning Laws, the client proposes a main ground floor level at 8 feet MSL and a deck level at 7 feet 6 inches MSL. This elevation is necessary to adhere to the existing regulations.*

*However, this proposed change results in a 5-foot difference between the current site elevation and the intended ground floor level. Consequently, the planned three-story residence encroaches the front setbacks due to terracing of the height difference from ground floor slab to grade level at roadside. The reason is to reduce the need for and hand railing while keeping to the design perimeter / esthetics of the surrounding residence. In addition, the client intends to add lush landscaping within the terracing while keeping pathways and steps to the residence from roadside to a minimum.*

*Nevertheless, the existing site conditions present numerous challenges for the overall design. Implementing the proposed changes would necessitate substantial alterations affecting elements such as plumbing, irrigation and structural components. The client requests that these challenges be considered when considering the variance request. It's important to note that all other requirements stipulated by Planning regulations have been met.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for a five (5) bedroom, three (3) storey house, four (4) pools and a 6 ft wall

### **Zoning**

The property is zoned Low Density Residential.

### **Specific Issue**

#### **1) Front setback**

Pursuant to Section 9 (8) (i) of the Development and Planning Regulations (2022 Revision) the minimum front setback is 20 ft. The site plan shows a front setback of 7 ft 7 in for the garden stairs.

## **2.32 PRESTIGE MOTORS LTD. (Design Cayman) Block 20B Parcel 384 (P23-1057) (\$20,000) (NP)**

Application for 4 signs.

### **FACTS**

<i>Location</i>	Owen Roberts Drive, George Town
<i>Zoning</i>	Airport Zone
<i>Proposed use</i>	Façade & Totem Signs
<i>Sign Area</i>	Various

**Recommendation:** Grant Planning Permission

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The proposal is for the following signs at Prestige Motors in George Town:

- replace existing totem sign with slightly larger totem sign
- replace Hyundai sign and banding facing Owen Roberts Drive
- new service sign and banding facing Owen Roberts Drive

-replace Prestige Motors sign and banding facing Owen Roberts Drive

**Zoning**

The property is zoned Airport Zone.

**3.0 DEVELOPMENT PLAN MATTERS**

**4.0 PLANNING APPEAL MATTERS**

**5.0 MATTERS FROM THE DIRECTOR OF PLANNING**

**6.0 CPA MEMBERS INFORMATION/DISCUSSION**

## Appendix A



**ABERNETHY & ASSOCIATES LTD.**  
LICENSED LAND SURVEYORS

July 12, 2023

CENTRAL PLANNING AUTHORITY  
GRAND CAYMAN  
CAYMAN ISLANDS

To whom it may concern:

**RE: APPLICATION FOR AFTER THE FACT ROAD CONSTRUCTION AND GATE  
BLOCK 66A PARCEL 20 & BLOCK 69A PARCEL 51**

Please find attached the documents and plans for the application for the after the fact road construction as well as the extension of the road and gate installation.

The road has been constructed by mechanical means for the use of the owner of the property only and no other development of the property is planned at this time. The road has been constructed by mechanical means with 24' chip seal over Parcels 69A 29, 30, & 31 in the location of the registered 30' right of way. From Parcel 69A 50 the road is 12' rough shot rock. The total length of road constructed on the 2 subject parcels is 8,299.3' with an additional proposed extension of 662.6' by mechanical means. The gate is to be installed at the entrance into 69A 51 within the boundaries of the parcel as per the attached plans. Due to the rough construction of the road, vehicles will only be able to travel at low speeds (15 MPH or slower).

If you have any questions, please let me know.

Sincerely,

Greg Abernethy, LLS

Central Planning Authority  
Government Administration Building  
PO Box 113  
Grand Cayman KY1-9000  
CAYMAN ISLANDS

D: +1 345 815 1855  
E: James.Bergstrom@ogier.com

9 October 2023

Dear Sirs

**RE: Project Name: Bon Crepe Ltd. – P23-0679**

This is a follow up letter from my initial letter dated 21st July 2023 and my follow up letter dated 3rd October 2023. This letter provides additional information which is relevant to this application and which was not mentioned in the DoE submission.

I attach the map published per the Cayman Islands Gazette Extraordinary 13/2005 showing the 125 foot wide by-pass going through the reserves and Property. I also attach a more detailed plan showing where the 125 wide by-pass will run through the Salina Reserve and the Property plotted by my surveyor using data received from the NRA last week.

In my letter of the 3rd October, 2023, I over stated the size of the two reserves. I do not know the size of the additional parcels acquired on the northern part of the Salina Reserve as mentioned by the DoE but my estimate of the total area would be more around 1,000 acres.

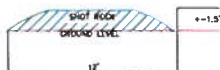
Yours faithfully



**James Bergstrom**



Total area = 236,610 Sq. Ft.



The positions of shifting boundaries are indicative only and should NOT be scaled.

I hereby certify that all dimensions are correct.

I hereby certify that all dimensions are correct.

**SUBJECT PARCEL BOUNDARIES**

**ABUTMENTS AND ADOPTIONS**

**SURVEYED**

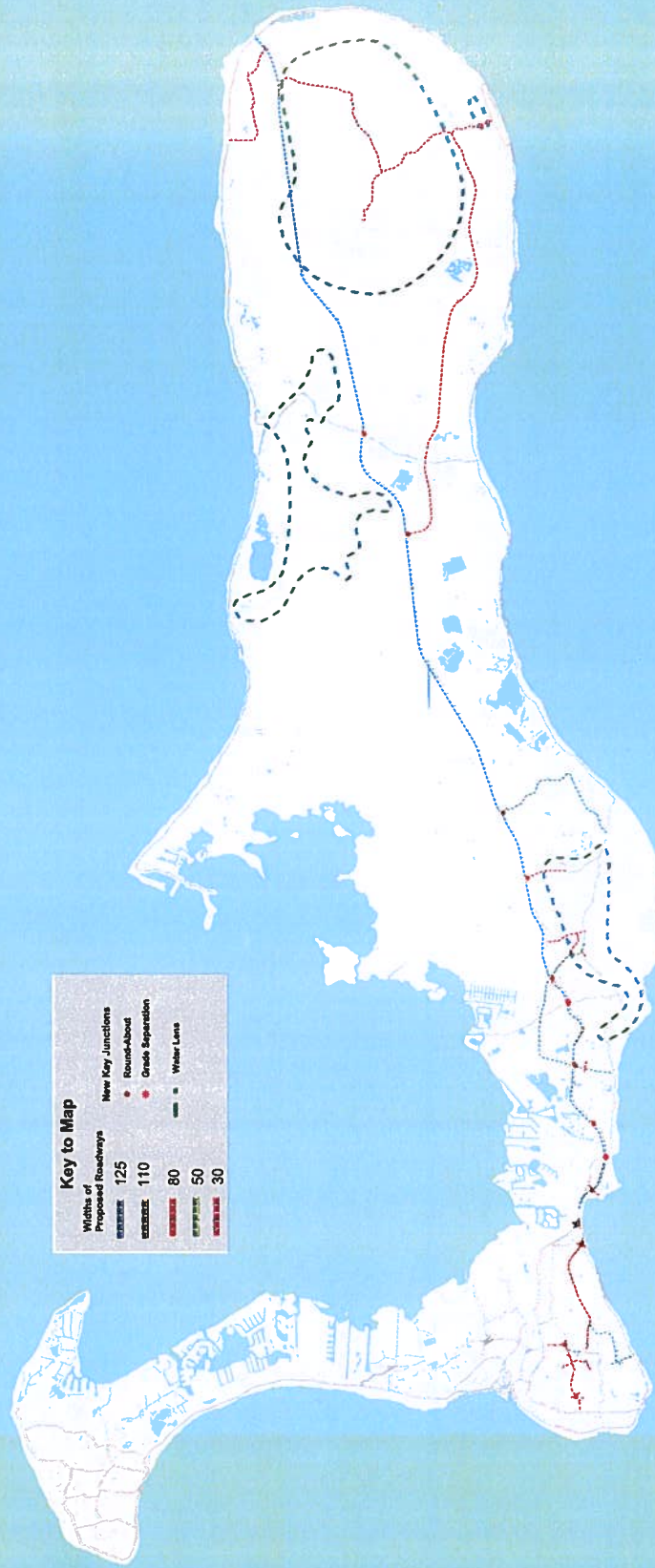
**RIGHTS OF WAY**

**CADASTRAL**

**TOPOGRAPHIC INFORMATION**

**ROAD UPGRADEMENT**

# Approved East-West Arterial Corridor with Collector Road Connections Gazetted Under Section 25 (4)(a) of the Roads Law on May 3, 2005



1:50,000



Base mapping data provided by  
the Lands & Survey Department  
Map published per the Cayman Islands  
Gazette Extraordinary No. 13/2005.



3 October 2023

Central Planning Authority  
Government Administration Building  
PO Box 113  
Grand Cayman KY1-9000  
CAYMAN ISLANDS

Dear Sirs,

**RE: Project Name: Bon Crepe Ltd. – P23-0679**

I refer to the application for planning permission noted above submitted on 12th July 2023. I am writing this letter in response to a number of misleading statements made by the Director of the Department of Environment (**DoE**) in a memorandum to the Director of Planning dated 29 September 2023. This letter is supplemental to the letter submitted in support of the application dated 21 July 2023 which included additional background.

The application for planning permission relates to Block 69A Parcel 51 and Block 66A Parcel 20 which is about 300 acres in East End (**Property**) and is in respect of:

- (a) After the fact permission for an existing road/trail;
- (b) Permission to complete the last 700 feet of the planned trail; and
- (c) Permission to build a privacy gate at the boundary of the Property.

The Property is zoned **Agricultural / Residential**. The proposed use of the Property is to do a limited amount of farming for self-sustainability (which was the traditional use of the Property) and to hike/enjoy nature. The work which has been done and which is proposed is to provide access and privacy. The trails dead end and there is no through access to any other property. This is as low impact a use of the land as possible, other than leaving it undeveloped. The zoning currently provides the legitimate expectation to the landowner to also use it for residential purposes in the future.

What is clear from the DOE's statement is that the only outcome which is acceptable to the DoE is no human use or development of the Property of any kind. As described below the DoE is responsible for the blue iguana release program which has caused the blue iguanas to be on the Property, has improperly caused the National Conservation Council (**NCC**) to pass the Interim Directive based on the presence of the blue iguanas on the Property and is now trying to oust the jurisdiction of the CPA to hear this application so it can be redirected to the NCC to refuse the application. This amounts to a land grab by the DOE on behalf of the Government whilst trying to avoid any payment of compensation. This is in breach of the Constitution and a flagrant abuse/overreach of power. If the DoE/NCC intended to make this Property part of the reserve, then it should have encouraged the Government to acquire it when it was advertised for sale on the open market in 2014. What the DoE cannot do is through its unilateral actions effectively make a property a part of the reserve thereby devaluing an individual's land without any notice or ability of the individual to object or be heard.

I will follow the headings in the DoE 's statement for ease of reference, without repeating the DoE's comments.

#### **Inaccuracies in the Applicant's After-the-Fact Application**

The DoE have presented certain measurements with the aim of discrediting the measurements presented by the surveyor and mentioned by me in my supporting letter. Those measurements are, I believe, based on hand measurements taken one afternoon by two DoE employees, Fred Burton and TayVanis Oyog, with a measuring tape. I am not aware of either having any qualifications relating to the surveying of land. There were also estimates taken from drone footage. I asked my surveyor to re-check all of the measurements and here is his reply:

*I ran the actual areas of the road and track that we shot instead of using the linear footage and we are under what I originally recorded. I made a large mistake on the area of 69A 29, 30, & 31. I had on the plan that it was 116,131.2 Sq. ft. but the number is actually 36,452 Sq. Ft.*

*The numbers using the areas are:*

69A 29, 30, & 31	36,452 Sq. Ft.	
69A 50	17,267 Sq. Ft.	Calculated at 12,946 Sq. ft. using linear feet
66A 20 & 69A 51	119,092 Sq. Ft.	Calculated at 99,582 Sq. Ft. using linear feet
Extension	7,951 Sq. Ft.	Same calculation
Total	180,762 Sq. Ft.	The Plan submitted said a total of 236,610 Sq. Ft.

*That is 55,848 sq. Ft. under what we applied for. It is an error on our part, but at least it is an error in the right direction and that proves we're not trying to "pull the wool over their eyes".*

There has been no attempt to conceal that the first section (Over 69A 29, 30 and 31), which is finished with chip and spray, is a proper road. The full width is 30 feet with the reserve and about 24 feet with the actual chip and spray driving service. This is the size of the vehicular ROW granted. It is about 1,390.8 feet long.

The remaining road over 69A 50 is the 12 feet trail format using the rough shot rock. That section is 1078.9 feet long. The surveyor has confirmed, it is a little wider than 12'. He said he is getting more like 14' in most places.

The remaining trails are on the Property and total 8,235.5 feet long and these are also the rough shot rock 12 feet specification. He said it is a little wider than 12'. He said he is getting more like 14' in most places.

In terms of the 12 feet specification, I can confirm that was the instructions issued. I can see depending on the terrain this varied as the contractor tried to ensure a 12 feet wide drivable surface. This is not precise work. The DoE has deliberately selected pictures near the turning areas to present the worst scenario possible. These turning areas are required as the trucks delivering the material cannot turn on such a narrow trail and so they build these turning areas as they go along. These would not be needed for a wider road.

In its calculations, it appears the DoE has taken all of the areas (including the chip and spray road and turning areas) and measured to the outside area of where the material settled (ignoring the drivable area) in a few places and then used those measurements to extrapolate out. They have also taken selective pictures to try and emphasise their point.

This tangent on the road size is largely irrelevant for this application. On parcel 50, I could have made the road 30' wide as that was the size of the ROW granted. I had no restrictions on the Property and put in the narrowest road I was told I could do with the equipment required. The DoE is, I believe trying to show I had some other clandestine purpose that does not exist.

### **Intentions of the Applicant**

The DoE has attempted to discredit my stated intentions for the use of the Property. This is not relevant to the current application. Even if I have some other clandestine motive, I will still need to apply to the CPA for planning permission to do anything else.



The Property has been traditionally used for farming and there is a material amount of arable land even though it is a small portion of the total 300 acres. There are a number of farms on the adjoining properties with a similar make up.

The DoE does not find it logical that I would build such a "major road" (being the trail discussed above) through the Property. The simple answer is the trails are there for access. It is not feasible to use the Property as I intended without them. The level of financial cost incurred in purchasing the Property, and putting in the road and trails to achieve this enjoyment is a private matter for me.

### **History of the After-the-Fact Planning Application**

This section seems more aimed at criticising the Planning Department than me. However, what it confirms is that the DoE was aware of the work since 2019 yet made no attempt to contact the landowner over a 4 year period. I immediately stopped work when first contacted by the DoE.

The DoE also refers to the fact I have been charged with the take of Buttonwood in respect of the building of the trails. This statement is the first I have heard that the DoE was also trying to charge me for other offences and no evidence has been presented in support of those claims. I was not aware of the Mangrove Conservation Plan issued in 2020 (which provides the basis for the charge) or even that Buttonwood is a mangrove as it is so commonly used throughout the Island for hedges. The evidence presented against me in that case, even with the DoE's expansive measuring techniques, amounts to an area is **less than one acre** and then their evidence shows that within that area there would have been multiple other plants. So, the area of Buttonwood affected would be even less. If planning permission is granted to this application, it provides a defence to the charge.

### **Blue Iguanas**

The DoE's statement makes it clear that the successful blue iguana program has led to the dispersal of blue iguanas from the Salina and Colliers Wilderness Reserves to the adjoining properties, including the Property. The DoE is responsible for the blue iguanas' presence on the Property meaning there were no blue iguanas on the Property before the program. This should alarm all landowners in the eastern districts, particularly those in the vicinity of the reserves and any other areas where the DoE is releasing blue iguanas. They too are potential victims of a future attempted land grab by the DoE/NCC.

As mentioned by the DoE in the statement, I am appealing the *Interim Directive for the Protection of the Grand Cayman Blue Iguana* which impacts the Property. I strongly object to how the Interim Directive was made, using emergency powers without any basis and without any consultation with the landowner. Among the conditions is included the ability of the DoE employees to enter the Property at any time without my permission.

The actual trail on the Property covers 119,092 Sq. Ft. or 2.73 acres. The area of the additional 700 feet is 7,951.2 or 0.18 of an acre. On the Property of 300 acres.

The DoE mentions roadkills as a major threat to blue iguanas. The trails on the Property dead end and are very rough to drive on. I am applying to add a gate to ensure even less access. There is already a gate on Sunnyfield Road to stop any unauthorised vehicular access mainly to stop the dumping of garbage. The gate I have applied for is more robust and will also prevent any pedestrian access.

I was not able to find the area of the picture of the purported dead snake but do note that snakes shed their skins on a regular basis so perhaps that may be the explanation. The DoE has presented no evidence of any harm to any blue iguana.

### **Section 41(4) Considerations**

The DoE is relying on the above mentioned Interim Directive (which the DoE improperly caused the NCC to make), which is subject to appeal, to try and oust the jurisdiction of the CPA in respect of this application. It asserts that approval of the after-the-fact road and of the extension of the road and the gate would or would be likely to cause an adverse effect on the designated critical habitat, namely:

- Section 2(a) of the NCA: Alterations that may impair the capacity of the area to function as a habitat beneficial to wildlife,
- Section 2(j) of the NCA: Alterations that may hinder or impede the movement or migration of wildlife.

The road and trail on parcels 29,30, 31 and 50 which are part of the after the fact permission, provide access to other landowners who were previously unable to access their property, one of whom has built a house for which planning permission was granted. The trails on the Property which allow me to access my land and the addition 700 feet applied for, amount to less than 3 acres out of 300. So around 1%. This takes no account of the 2,000 acres or so of the actual reserves and other properties owned or managed by the National Trust/DoE.

It is for the CPA to determine for itself whether an adverse effect is likely, and only if it makes this determination does it refer the matter to the NCC. If you look at each element of the application, I do not see how any reasonable person could conclude there were. There are three parts of the application:

- (a) After the fact permission for an existing road/trail. This is an existing state of affairs. There is no development as the road and trails are already in place.
- (b) Permission to complete the last 700 feet of the planned trail. The area which will be impacted is 0.18 of an acre out of a total area of around 300 acres.
- (c) Permission to build a privacy gate at the boundary of the Property. This, added to the existing gate, will prohibit any unauthorised vehicular or pedestrian traffic. This should allay many of the concerns raised by the DoE.

None of these would or would be likely to impair the capacity of the area to function as a habitat beneficial to wildlife or hinder or impede the movement or migration of wildlife if anything the trails would be helpful.

If the CPA makes its own determination that there are no such adverse effects, I would respectfully ask that the CPA proceed with the consideration of this application. I would be grateful if I could attend the CPA meeting when the application is heard.

Yours faithfully



James Bergstrom



Central Planning Authority  
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PO Box 113  
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CAYMAN ISLANDS

D: +1 345 815 1855  
E: James.Bergstrom@ogier.com

21 July 2023

Dear Sirs,

**RE: Project Name: Bon Crepe Ltd. - Application Number: i071223-123334-91**

I refer to the application for planning permission noted above submitted on 12th July, 2023. I am writing this letter in support of that application and to respectfully request that planning permission be granted.

## **1. Background**

I am the indirect owner (through Bon Crepe Ltd.) of Block 69A Parcel 51 and Block 66A Parcel 20 which is about 300 acres in East End (**Property**).

On the 24th February, 2023, the registered proprietor of the Property received a cease and desist order made by the Director of the Department of the Environment pursuant to section 30 of the National Conservation Act (**NCA**). I immediately instructed the crew working at the Property to stop work on the access trail being put in and had an email sent to the Department of the Environment (**DOE**) acknowledging receipt of the Order and that all work had been stopped. The email also stated that a more substantive response would be provided early the following week as it was then a Friday. The substantive email was sent on Tuesday 28th, February 2023. I was also put in contact with Brittany Parchment a Senior Compliance with the Department of Planning on the 1st March, 2023. I also sent her the correspondence with the DOE. This was the first contact I had had with the DOE or the Department of Planning.

I bought the Property in 2014 with the primary purpose of planting enough fruit, vegetables, root plants and breadkind for my wife and I to become self-sustainable. Since then, we have been hiking the Property to identify the best areas to farm. This has proven very difficult (and dangerous). Much of this consisted of following the tracks from when the surveyors completed a full survey but over time most of those trails have grown over. A few years back we met with Beacon Farms to get some advice and explore whether they could do the farming and exchange for taking the excess crop after giving us enough for ourselves. They made the excellent suggestion of getting a drone survey done to help identify the possible areas to farm. This was done. Using this plan, we identified the arable areas and then mapped out access trails to reach those areas. For the most part the land is rocky cliff with low shrubs and then rocky areas with taller trees. There are then areas with pockets of red mould. Initially I asked for the access trails to be restricted to 8 feet wide but was told due to the ruggedness of the land and the gauge of the machine that had to be used meant a minimum of 12 feet. We have tried to ensure the trails are only created over the cliff rock and affected the fewest trees possible. The trail on the Property is constructed of rough shot rock material, it is narrow, with a very rough surface, this keeps the speed of any vehicles on the road very low (less than 15 MPH).

The access has allowed us to now explore most of the significant red mould areas. In each area, we have found signs of the land having been farmed in the past. These signs include large fruit trees (30 plus and counting), old cooking equipment and an old boundary wall of over 1,000 feet in length with smaller secondary walls. The trail may only be used by me as the landowner or those I invite. Some of the trail was put in about 4 years ago but a new section has been put in over the last seven months. These access trails are now complete save for the last seven hundred feet to

get to the walled area. This area is already mostly clear and is the most likely location of where we would mainly farm. The trail dead ends and there is no through access.

We have also purchased land on the ocean nearby and our intention is to build a house there once we retire and to keep the Property for farming and hiking.

## **2. Planning permission**

It is not my current intention to develop the Property. The proposed use is as set out above and the current plan would be to eventually put the Property in a foundation company for my children.

Before starting the trail work, I did look at the provisions of the Development and Planning Act (DPA). Here are the relevant parts:

13(3) In this Act —

“development” means the carrying out of building, engineering or other operations in, on, over or under any land, the making of any material change in the use of any building or other land, or the subdivision of any land, except that the following types of developments shall not require planning permission but shall be subject to all other provisions of this Act and any regulations made under this Act, including the Building Code Regulations (2021 Revision), namely —

(d) the use of any land for the purpose of agriculture (except living accommodation, grazing, dairy farming, the breeding or keeping of livestock, or the farming of turtles in confinement);

Under Cayman's Bill of Rights: You have a right to enjoy the things that you own. Government cannot interfere with things you own or the way you use them. I think this introduces a degree of materiality, and so the DPA would be interpreted in the proprietor's favour where there is no actual development, and the owner is simply using its own land for its traditional purpose.

Even if putting in the access tracks are deemed to constitute "development" then my view is that it is part of the overall use of the land for purposes of agriculture (for which the Property has traditionally been used) and therefore exempt from the requirements of the Act.

As a final check I looked at the large neighbouring farms accessed off Farm Road and was not able to find any planning permission grants for their internal or access trails/roads.

In my correspondence with the Planning Department, I put the above argument to the Director. He advised that planning permission is required as in his view it does not fall within an exemption under Section 13 of the DPA. Even though I disagree and think this view could be challenged, I decided the easiest way forward was to follow his guidance and an application has been submitted for planning permission for the trails.

The Authority should also be aware that I have made an application to the Cabinet to terminate an interim directive made by the National Conservation Council and the cease and desist order made by the Director of the DOE. I attach that application by way of additional background.

Yours faithfully



**James Bergstrom**

**SENT BY EMAIL AND BY HAND**

**22 MARCH 2023**

**The Cabinet of the Cayman Islands**  
Government Administration Building  
133 Elgin Ave, George Town  
Cayman Islands

**National Conservation Council**  
**c/o Department of Environment**  
580 N Sound Rd, George Town  
Cayman Islands

**Attention for distribution to respective Cabinet and Council**

**Members :** Samuel Rose, Cert. Hon., JP, *The Cabinet Secretary*  
John Bothwell, *Secretary to the National Conservation Council*

Hon Members of Cabinet and Members of the National Conservation Council,

I am writing to you as the owner of Block 69A Parcel 51 and Block 66A Parcel 20 which is about 300 acres in East End (**Property**).

The purpose of this letter is to respectfully request that the interim directive made by the National Conservation Council be terminated and cease to have effect pursuant to section 17(8) of the National Conservation Act (**NCA**) and further that the cease and desist order made by the Director of the Department of the Environment pursuant to section 30 of the **NCA (Order)** be rescinded.

**1. Background**

On the 24th February, 2023, I received the Order. I immediately instructed the crew working at the Property to stop work and had an email sent to the Department of the Environment (**DOE**) acknowledging receipt of the Order and that all work had been stopped. The email also stated that a more substantive response would be provided early the following week as it was then a Friday. The substantive email was sent on Tuesday 28th, February 2023. A copy of that email which includes a copy of the Order is attached.

Prior to being served the Order, I had not before been contacted by the DOE.

I also reached out to the Department of Planning on 1st March 2023 to check my understanding that I did not need planning permission for the work being done. I attach that email which also includes some further correspondence between me and the Planning Department. Once I hear back from the Director of the Planning Department, I intend to follow his advice. Please note the main access road to the Property and the internal trails to the north of Parcel 51 were completed about 4 years ago with no issues. The current work only relates to the access trail to reach Parcel 20.

On the 1st March, 2023, I heard back from the Director of DOE stating the DOE had not received the emails until that day (no error messages were returned to the senders), but not mentioning that she had already organised for the interim directive to be issued by the National Conservation Council the day before. I attach an excerpt from the Gazette setting out the interim directive.

**2. Interim directive and Order are defective**

Interim directive

Section 17 of the NCA deals with the adoption of conservation plans for protected species. If you read the section, the general thrust is to provide significant detail and notice as well as an opportunity for landowners to be heard before any plan is considered by Cabinet who can then make an informed decision. Section 17(7) is a power given to the Council to make a directive where "urgently" required for the protection of the

species. The section then goes on to provide a process for either ratification or termination by the Cabinet. It also allows the Council to terminate its interim directive presumably where it finds its original information was wrong or incomplete. This is a safeguard as otherwise section 17(7) could be mis-used to override the natural protections of section 17.

As the landowner, I was not contacted before receiving the Order. It is clear from the interim directive that the Property was under drone surveillance from at least the 10th February, 2023 which would indicate knowledge or notification of the work well before that date. I do not know when the Director made the recommendation to the Council for the interim directive, but I suspect it was also before the Order was served on me. Further as soon as the Order was received the work was stopped. In short there was no urgency, so the conditions required for the Council making the interim directive were not met.

The work being done was on a very small portion of the Property and involved building trails to access what is very rugged land. I do not accept that building 12 foot wide trails around private property is a disturbance of the habitat.

The measures imposed by the directive include requiring any land clearing on the Property, the arable parts of which were traditionally used for farming for many years, to have prior planning permission (or DOE permission presumably where planning permission is not required) is a significant restriction on the use and enjoyment of the Property as is the right for DOE staff to access private property at any time without the permission of the owner.

Further, and assuming the Blue Iguanas were released on the Salina and Colliers Wilderness Reserves, why have not all the properties touching those reserves been designated and only a small number of properties targeted?

#### Order

The Order was made under section 30 (1) of the NCA. In my attached email note back to the Director, I set out the reasons why I thought there was no basis for her to make the cease and desist Order and requested that the Order be rescinded. Other than an acknowledgement of the email no response has been received from the Director or the DOE.

For the above reasons it is my view that the decision to make the interim directive was not lawful, rational, proportionate or procedurally fair as required by Section 19 of the Cayman Islands Constitutional Order 2009 and should be terminated.

It is also my view that there was no basis for the Director to make the Order. I would respectfully request that the Order be rescinded.

I can confirm no further work will be completed on the Property until I have complied with any requirements suggested by the Director of the Planning Department.

I am available to provide any further information or any answer any questions. My email is [James.Bergstrom@ogier.com](mailto:James.Bergstrom@ogier.com) and my mobile number is 5169077 if you have any questions.

Yours faithfully

  
**James Bergstrom**

### **Honourable Members of the Cabinet as at 22 March, 2023**

Hon. G Wayne Panton, JP, MP, *Premier and Minister for Sustainability & Climate Resiliency and Minister for Finance & Economic Development*

Hon. Juliana Y. O'Connor-Connolly, JP, MP, *Deputy Premier and Minister for Education and Minister for District Administration & Lands*

Hon. Bernie A. Bush, MP, *Minister for Youth, Sports, Culture & Heritage*

Hon. Kenneth Bryan, MP, *Minister for Tourism & Ports*

Hon. Andre M. Ebanks, MP, *Minister for Financial Services & Commerce and Minister for Investment, Innovation & Social Development*

Hon. Johany S. "Jay" Ebanks, MP, *Minister for Planning, Agriculture, Housing, & Infrastructure*

Hon. Sabrina Turner, MP, *Minister for Health & Wellness and Home Affairs*

Hon. Dwayne Seymour, MP, *Ministry of Border Control and Labour*

### **National Conservation Council Members**

Ms Gina Ebanks-Petrie, *Director, Department of Environment*

Timothy Austin, *Deputy Director, Department of Environment*

Adrian Estwick, *Director, Department of Agriculture*

Marco Whittaker, *on behalf of the Planning Department Director*

Annick Jackman, *Director, National Trust of the Cayman Islands*

McFarlane Conolly, *Chair*

Jessica Harvey, *Cabinet Appointee*

Lisa Hurlston-McKenzie, *Cabinet Appointee*

Edward Chisholm, *Cabinet Appointee*

Pierre Foster, *Cabinet Appointee*

Harrison Bothwell, *Cabinet Appointee*

Patricia Bradley, *Cabinet Appointee*

Stuart Mailer, *Cabinet Appointee*

John Bothwell, *Secretary*

### **Copy to:**

### **Department of Planning**

Haroon Pandohie, *Director of Planning*

Brittney Parchman., *Senior Compliance Officer*



**From:** [James Bergstrom](#)  
**To:** [doe@gov.ky](#)  
**Cc:** [William Jones](#)  
**Subject:** Bon Crepe Ltd - Section 30 Cease and Desist Order re: Block 69A parcel 51 and Block 66A parcel 20  
**Date:** 28 February 2023 04:05:38 PM  
**Attachments:** [2023.02.23 - Bon Crepe Ltd - Cease and Desist Letter.pdf](#)  
**Importance:** High

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**For the attention of Ms Gina Ebanks-Petrie**

Dear Ms Ebanks-Petrie,

I refer to your cease and desist letter received 24 February 2023 and our reply on the same date (below) confirming both receipt and that all work has stopped.

### **1. Background**

I am the sole shareholder and director of the Company.

The Company bought the Property in 2014 with the primary purpose of planting enough fruit, vegetables, root plants and breadkind for my wife and I to become self-sustainable. Since then, we have been hiking the Property to identify the best areas to farm. This has proven very difficult (and dangerous). Much of this consisted of following the tracks from when the surveyors completed a full survey but over time most of those trails have grown over. As few years back we met with Beacon Farms to get some advice and explore whether they could do the farming and exchange for taking the excess crop after giving us enough for ourselves. They made the excellent suggestion of getting a drone survey done to help identify the possible areas to farm. This has now been done. Using this plan, we identified the arable areas and then mapped out access tracks to connect these areas.

For the most part the land is rocky cliff with low shrubs and then rocky areas with taller trees. There are then areas with pockets of red mould. Initially I asked for the access tracks to be restricted to 8 feet wide but was told due to the ruggedness of the land and the machine that had to be used meant a minimum of 12 feet. A truck or SUV is really needed on the track, and you need to go extremely slowly. We have tried to ensure the tracks are only created over the cliff rock and affected the fewest trees possible.

The access has allowed us to now explore most of the significant red mould areas. On each we have found signs of the land having been farmed in the past. These signs include large fruit trees (20 plus and counting), old cooking equipment and an old boundary wall of just under 1,000 feet in length. These access tracks are now complete save for the last few hundred feet to get to the walled area. This area is already mostly clear and is the most likely location of where we would mainly farm.

We have also purchased land on the ocean nearby and our intention is to build a house there once we retire and to keep the Property for farming and hiking. We are both spending time trying to learn more about Cayman's native flora and fauna and intend to protect both alike.

---



## 2. Planning permission

In the broader sense of the word, it is not our current intention to develop the Property. The proposed use is as set out above and the current plan would be to eventually put the Property in a Foundation for my children.

Here are the relevant provisions of the Development and Planning Act:

13(3) In this Act —

“**development**” means the carrying out of building, engineering or other operations in, on, over or under any land, the making of any material change in the use of any building or other land, or the subdivision of any land, except that the following types of developments shall not require planning permission but shall be subject to all other provisions of this Act and any regulations made under this Act, including the *Building Code Regulations (2021 Revision)*, namely —

(d) the use of any land for the purpose of agriculture (except living accommodation, grazing, dairy farming, the breeding or keeping of livestock, or the farming of turtles in confinement);

Under Cayman's Bill of Rights: You have a right to enjoy the things that you own. Government cannot interfere with things you own or the way you use them. I think this introduces a degree of materiality, and so the DPA would be interpreted in the proprietor's favour where there is no actual development, and the owner is simply using its own land for its traditional purpose. I did check the large neighbouring farms accessed off Farm Road and was not able to find any planning permission grants for their internal roads.

Even if putting in the access tracks are deemed to constitute "development" then it is clearly part of the overall use of the land for purposes of agriculture (for which the property has traditionally been used) and therefore exempt from the requirements of the Act.

## 3. National Conservation Act

In your letter you refer to "all works associated with the 'take' of mangroves and the potential 'take' of Blue Iguana".

I am not aware of any mangroves on any part of the Property but confirm there are none where the access tracks have been put in.

In terms of blue iguanas, I confirm there has been no activity constituting a "take":- means to collect, hunt, kill, destroy, damage, injure, disturb, harass, harm, wound, capture, molest or impede a live specimen in any way or to attempt to do is, and includes incidental taking. In fact, I think the opposite is true and the Property will offer any blue iguanas in the area a sanctuary.

I am hopeful that the above background information is helpful and that with this information, you can conclude, as I do, that there was no basis for the cease and desist order. I would respectfully request that the order be rescinded.

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My email is [James.Bergstrom@ogier.com](mailto:James.Bergstrom@ogier.com) and my mobile number is 5169077 if you have any questions.

Yours sincerely

**James Bergstrom**

Partner

Ogier

[\(Website Bio\)](#)

D: +1 345 815 1855 | T: +1 345 949 9876 | M: +1 345 516 9077

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[ogier.com](http://ogier.com)

As from 11 October 2022 Ogier, which was constituted as a general partnership under the laws of the Cayman Islands, converted to a limited liability partnership registered in the Cayman Islands as Ogier (Cayman) LLP. Registered number 643450.

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**From:** William Jones <William.Jones@ogier.com>

**Sent:** 24 February 2023 11:13 AM

**To:** doe@gov.ky

**Cc:** James Bergstrom <James.Bergstrom@ogier.com>; Cline Glidden <cline.glidden@ogier.com>;

Sophie Warburton <Sophie.Warburton@ogier.com>

**Subject:** Bon Crepe Ltd - Section 30 Cease and Desist Order re: Block 69A parcel 51 and Block 66A parcel 20

**Importance:** High

**For the attention of Ms Gina Ebanks-Petrie**

Dear Ms Ebanks-Petrie,

On behalf of Bon Crepe Ltd, we confirm receipt of your cease and desist letter dated 23 February 2022 (which we assume should have been a reference to 2023).

We will send you a substantive response to your letter next week and confirm that in the meantime, all work has stopped.

Kind regards,

Will

**William Jones**

Partner

Ogier

(he/him/his)

D: +1 345 815 1873 | T: +1 345 949 9876 | M: +1 345 516 4189

Beijing | British Virgin Islands | **Cayman Islands** | Guernsey | Hong Kong | Ireland | Jersey | London | Luxembourg | Shanghai | Singapore | Tokyo

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As from 11 October 2022 Ogier, which was constituted as a general partnership under the laws of the Cayman Islands, converted to a limited liability partnership registered in the Cayman Islands as Ogier (Cayman) LLP. Registered number 643450.



**DEPARTMENT OF  
ENVIRONMENT**  
CAYMAN ISLANDS GOVERNMENT

**National Conservation Act**  
**Section 30 Cease and Desist Order**

**23 February 2022**

**Site address:**

**Block 69A Parcel 51 and Block 66A Parcel 20**

**Served upon:**

**BON CREPE LTD,  
C/O Ogier Global (Cayman Ltd)  
89 Nexus Way,  
Camana Bay,  
Grand Cayman KY1-9009  
Cayman Islands**

In accordance with section 30(1)(a) of the National Conservation Act, 2013 ('NCA'), you are hereby directed to cease and desist, with immediate effect, all works associated with the 'take' of mangroves and the potential 'take' of Blue Iguana (*Cyclura lewisi*) on the above-mentioned parcels as a result of the construction of a road without the requisite planning permission. The unpermitted 'take' of mangroves is in contravention of Section 33(1)(a) and (2)(a) of the NCA and the Mangrove Species Conservation Plan (2020). The unpermitted 'take' of Blue Iguana is in contravention of Section 33(1)(a).

'Take', as defined in the NCA, means to collect, hunt, kill, destroy, damage, injure, disturb, harass, harm, wound, capture, molest or impede a live specimen in any way or to attempt to do so, and includes incidental taking.

Failure to comply with this Cease and Desist Order is an offence (Section 30(4), NCA) and subject upon successful prosecution to a fine of up to CI\$500,000, a term of imprisonment up to 4 years and the seizure of equipment used in the commission of the offence.

This Order shall remain in effect until further notice.

A handwritten signature in blue ink, appearing to read "Gina Ebanks-Petrie".

**Gina Ebanks-Petrie**  
**Director – Department of Environment**

**Copy to: Chief Officer - Ministry of Sustainability and Climate Resiliency**

**From:** [James Bergstrom](#)  
**To:** [Ebanks-Petrie, Gina](#)  
**Cc:** [Bothwell, John](#); [William Jones](#)  
**Subject:** RE: Bon Crepe Ltd - Section 30 Cease and Desist Order re: Block 69A parcel 51 and Block 66A parcel 20  
**Date:** 01 March 2023 04:55:40 PM  
**Attachments:** [image001.png](#)

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Thank you.

I am also in contact with Planning and trying to run that issue to ground with them.

Yours sincerely

James Bergstrom

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**From:** Ebanks-Petrie, Gina <Gina.Ebanks-Petrie@gov.ky>  
**Sent:** 01 March 2023 3:33 PM  
**To:** James Bergstrom <James.Bergstrom@ogier.com>  
**Cc:** Bothwell, John <John.Bothwell@gov.ky>; William Jones <William.Jones@ogier.com>  
**Subject:** Bon Crepe Ltd - Section 30 Cease and Desist Order re: Block 69A parcel 51 and Block 66A parcel 20

**This email originated from outside Ogier**

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Dear Mr Bergstrom,

This is to confirm receipt of your email of yesterday's date and the email from Mr Jones of the 24<sup>th</sup> Feb confirming receipt of the Cease and Desist Order, both of which have only been delivered to us today as the CIG is experiencing issues with Outlook which appears to be causing significant delays in email delivery.

We are grateful that all works have stopped while the DoE concludes its investigations into the matter. Thank you for the background information provided on the proposed use of the road and land as well your opinion on the interpretation of the relevant laws – we will consider this and revert should we have questions or require additional information.

Yours sincerely,

**Gina Ebanks-Petrie**  
**Director, Department of Environment**  
**Cayman Islands Government**

**Mailing Address:** P.O. Box 10202, Grand Cayman KY1 -1002, Cayman Islands.  
**Street Address:** 580 North Sound Way, Grand Cayman  
**Tel:** 345 244 5960 | **Fax:** 345 949 4020 | **Mobile:** 345 916 8266  
**Website:** [www.doe.ky](http://www.doe.ky)

**Please note our extensions have changed from 743 to 244!**



**please consider the environment before printing this email**

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# GOVERNMENT

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## Departmental Notices

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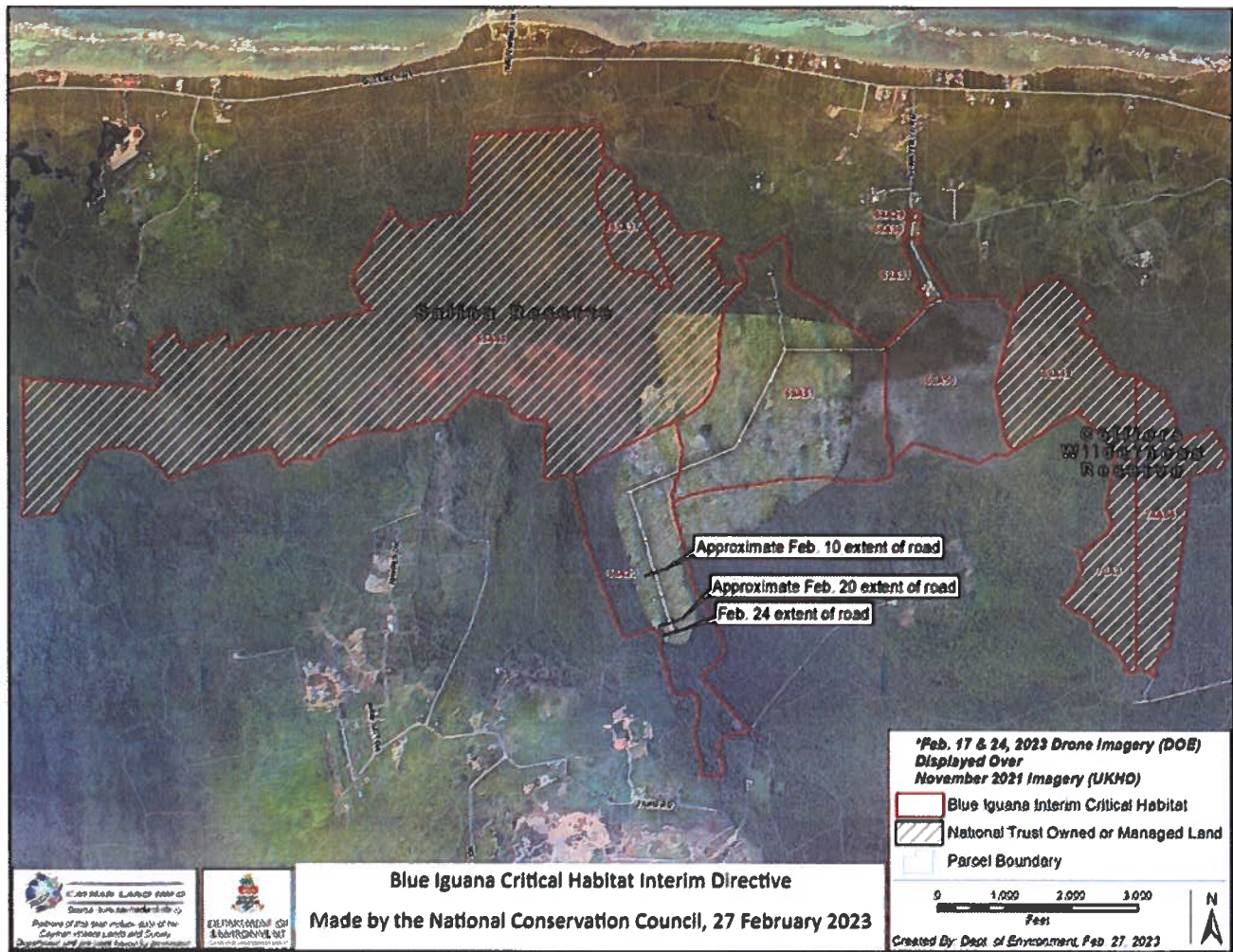
**Interim Directive for the Protection of the Grand Cayman Blue Iguana (*Cyclura lewisi*)**  
**Issued in accordance with Section 17 (7) of the National Conservation Act (2013)**

**Interim Protection Measures**

On the advice of the Director, and in consideration of the fact that there is an urgent need to immediately protect the portion of the population of this species occurring on property where Blue Iguanas have historically been released and property currently directly affected by unpermitted road construction, this Interim Directive therefore:

- i. Identifies interim Critical Habitat for the Grand Cayman Blue Iguana as
  - a) the Colliers Wilderness Reserve (Block 69A Parcel 49, Block 74A Parcel 66 and Block 70A Parcel 3);
  - b) the Salina Reserve (Block 65A Parcel 37 and Block 65A Parcel 48); and
  - c) land parcels Block 66A Parcel 20; Block 69A Parcels 29, 30, 31, 50 and 51;as outlined (in red) in the figure below for illustrative purposes.
- ii. Requires that in any legally permitted development within this Critical Habitat:
  - a) Speed bumps, hard-structured chicanes or other highly effective speed control methods are used to limit the speed of any vehicle on all roads of any kind so as to reduce or minimise the risk of road kill of Blue Iguanas.
  - b) Any human residence, farm, or other enterprise within this land shall have covenants attached to all parcels that prohibit all present and future occupants (whether owners or renters) from owning or supporting any outdoor cats or from allowing any dog to roam off leash; and that prohibit any feeding of Blue Iguanas.
  - c) Officers and agents of the Department of Environment may control alien species throughout this Critical Habitat.
- iii. Requires that any land clearing within this Critical Habitat shall require (a) planning permission or (b) a Section 20 permit under the Act.

**Made by the National Conservation Council, 27 February 2023.**



## Road Notices

### ROADS ACT (2005 REVISION) Section 3 Declaration

In exercise of the powers conferred on Cabinet by Section 3 of the Roads Act (2005 Revision), acting upon recommendation by the National Roads Authority, it is hereby declared that it is the intention of the National Roads Authority to construct a portion of new public road as described hereunder:

<b>REGISTRATION SECTION:</b>	West Bay Beach South
<b>REGISTRATION BLOCK:</b>	12D
<b>BOUNDARY PLAN:</b>	BP 623

**From:** [James Bergstrom](#)  
**To:** [Parchman, Brittny](#)  
**Cc:** [Cline Glidden](#); [Pandohie, Haroon](#); [Mark Scotland MCM Consulting](#)  
**Subject:** Block 69A Parcels 29 & 30  
**Date:** 15 March 2023 12:31:02 PM  
**Attachments:** [image001.png](#)  
[19169D.pdf](#)  
**Sensitivity:** Private

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Dear Ms. Parchman,

Many thanks for you email and the guidance from the Director. I had an acknowledgement of my email from the DOE but nothing further since.

I am not clear on what application I am being asked to make and would appreciate further guidance.

### **Uncertainty under the Development and Planning Act (2021 Revision)**

The work which has been done is, in my view, all part of the exemption for [the use of any land for the purpose of agriculture](#) as it allows me access to work the arable areas which are not accessible otherwise. This is a listed exemption under section 13 of the Development and Planning Act (2021 Revision).

I have tried to find any helpful precedents but was unable to find a grant of planning permission for the roads on the adjacent Kirkconnell and McLaughlin farms. Also, some farms, even those without any buildings, do expand the area they are farming from time to time and in doing so put in further tracks to the new areas but again I could not find any planning permission grants relating to these extensions.

It seems that where planning permission is granted for a house which is set back off a public road and the owner puts in a driveway to access the house, that driveway is not part of the permission granted and no separate permission is granted for the long driveway. In that example, it appears that the driveway is contingent on the permission for the house. In my case I do not need permission for the use of the land as a farm and the "driveway" is just to access the farming area for which no permission is required.

The Roads Law (2005 Revision) defines a road as:

*"road" includes the carriageway, waterways, bridges, culverts and fordings on the edge of the road, and the land on each side of the carriageway and waterways up to the boundary of the road; but does not include a mosquito control trail other than to the extent to which any such trail is declared to be a public road under this Law;*

However, "carriageway" is defined as being a public right of way and the tracks I have put in are private. A private road is defined as follows: *means a road to which the public does not have access as of right* which just takes you back to the road definition which is unhelpful. There is a definition of a "mosquito control trail" which does not assist except to draw a distinction between a "road" and a "trail" which is helpful as certainly the internal tracks I have put in are like (albeit rougher) the old dyke roads. So perhaps the term I use of track should instead be trail.

I did look up common definitions of the terms and here are the ones that appeared most helpful:

*A road is a wide way leading from one place to another, especially one with a specially prepared surface which vehicles can use.*

*A trail, also known as a path or track, is an unpaved lane or small road usually passing through a natural area.*

#### **Overview of work completed.**

Here is an overview of the work which has been done over the last 4 years. There are no utilities or ducts alongside or under the trails. Any development of any of the properties accessed by the trails will require planning permission in the future.

##### **1. Access road/trail**

The road comprises the access road over parcels, not owned by me, but put in by me, with the agreement of all the affected landowners (only three landowners may use this road) who could not previously access their land. That road follows the route of the registered easement (see attached in green) and was put in around 4 years ago. The main part of the access road is 25 feet wide and smooth with a chip and spray finish (as this is used by the other two landowners) but where it turns to the west it is the same 12 foot wide trail as the internal trails.

##### **2. Internal trails**

The internal trail is over parcels 51 and 20, which I own, and this trail was laid out to access the possible areas to farm. The trail may only be used by me as the landowner or those I invite. Some of the trail was also put in about 4 years ago but a new section has been put in over the last five months. This work is just about done with a few hundred feet left to reach the main farming area.

#### **Guidance requested from the Director**

Is the Director's view that:

- a. On reflection both the access road and internal trail are part of the exemption; or
- b. The access road (25 foot portion) is not part of the exemption (even though I put the road in with the express purpose of being able to access land to farm) and therefore I should apply for after the fact planning permission for that section; or
- c. The access road and the internal trail are not part of the exemption, and I should apply for after the fact planning permission for both.

I can see the Director's point if it is (b) but struggle with (c) where the trail is just an internal trail on my own land. If the Director's view is (c), it would be helpful if he could point me any helpful precedents.

Your help is appreciated.

Kind regards

James Bergstrom



**From:** Parchman, Brittney <[Brittney.Parchman2@gov.ky](mailto:Brittney.Parchman2@gov.ky)>  
**Sent:** 08 March 2023 3:34 PM  
**To:** James Bergstrom <[James.Bergstrom@ogier.com](mailto:James.Bergstrom@ogier.com)>; Cline Glidden <[cline.glidden@ogier.com](mailto:cline.glidden@ogier.com)>  
**Cc:** Pandohie, Haroon <[Haroon.Pandohie@gov.ky](mailto:Haroon.Pandohie@gov.ky)>; Mark Scotland MCM Consulting <[mark@mcmconsulting.ky](mailto:mark@mcmconsulting.ky)>  
**Subject:** RE: Block 69A Parcels 29 & 30

**This email originated from outside Ogier**

Good afternoon Mr. Glidden/Mr. Bergstrom,

Please accept my apologies for the delayed response. I have discussed with the Director the information that was relayed in your email.

In relation to your email sent to DOE, can you advise whether you received a response from Ms. Ebanks-Petrie?

As it relates to the construction of a road (whether public or private), the Director has advised that planning permission is required as it is not listed as an exemption under Section 13 of the Development and Planning Act (2021 Revision). We look forward to receiving an application at your earliest convenience.

Best Regards,

**Brittney Parchman, B.Sc.**

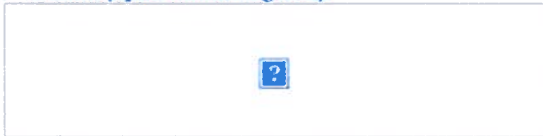
*Senior Compliance Officer*

Department of Planning | Cayman Islands Government | Government Administration Building

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✉ [brittney.parchman2@gov.ky](mailto:brittney.parchman2@gov.ky)



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**From:** James Bergstrom <[James.Bergstrom@ogier.com](mailto:James.Bergstrom@ogier.com)>  
**Sent:** Wednesday, March 1, 2023 10:31 AM  
**To:** Cline Glidden <[cline.glidden@ogier.com](mailto:cline.glidden@ogier.com)>; Parchman, Brittney <[Brittney.Parchman2@gov.ky](mailto:Brittney.Parchman2@gov.ky)>  
**Cc:** Pandohie, Haroon <[Haroon.Pandohie@gov.ky](mailto:Haroon.Pandohie@gov.ky)>; Mark Scotland MCM Consulting <[mark@mcmconsulting.ky](mailto:mark@mcmconsulting.ky)>  
**Subject:** [EXTERNAL] RE: Block 69A Parcels 29 & 30

Dear Ms. Parchment,

My contact details are set out below if you have any questions.

Kind regards

**James Bergstrom**

Partner

Ogier

**(Website Bio)**

D: +1 345 815 1855 | T: +1 345 949 9876 | M: +1 345 516 9077

Beijing | British Virgin Islands | **Cayman Islands** | Guernsey | Hong Kong | Ireland | Jersey | London | Luxembourg | Shanghai | Singapore | Tokyo

[ogier.com](http://ogier.com)

As from 11 October 2022 Ogier, which was constituted as a general partnership under the laws of the Cayman Islands, converted to a limited liability partnership registered in the Cayman Islands as Ogier (Cayman) LLP. Registered number 643450.

**From:** Cline Glidden <[cline.glidden@ogier.com](mailto:cline.glidden@ogier.com)>

**Sent:** 01 March 2023 9:53 AM

**To:** Parchman, Brittney <[Brittney.Parchman2@gov.ky](mailto:Brittney.Parchman2@gov.ky)>

**Cc:** Pandohie, Haroon <[Haroon.Pandohie@gov.ky](mailto:Haroon.Pandohie@gov.ky)>; Mark Scotland MCM Consulting <[mark@mcmconsulting.ky](mailto:mark@mcmconsulting.ky)>; James Bergstrom <[James.Bergstrom@ogier.com](mailto:James.Bergstrom@ogier.com)>

**Subject:** RE: Block 69A Parcels 29 & 30

Ms. Parchman I can confirm that no work is being done on the Agouti Group Ltd owned parcels, however there is a private road being created on property owned by Bon Crepe Ltd. Below I have provided the response to the DOE from the owner of that property Mr. James Bergstrom and hopefully this will provide the answer to the queries raised. Mr. Bergstrom is copied and so is Mr. Mark Scotland who is a shareholder in Agouti Group Ltd and has also been assisting with the private road on the Bon Crepe Ltd property and is therefore better able to answer any additional questions you may have.

**For the attention of Ms Gina Ebanks-Petrie**

Dear Ms Ebanks-Petrie,

I refer to your cease and desist letter received 24 February 2023 and our reply on the same date (below) confirming both receipt and that all work has stopped.

### 1. Background

I am the sole shareholder and director of the Company.

The Company bought the Property in 2014 with the primary purpose of planting enough fruit, vegetables, root plants and breadkind for my wife and I to become self-sustainable. Since then, we have been hiking the Property to identify the best areas to farm. This has proven very difficult (and dangerous). Much of this consisted of following the tracks from when the surveyors completed a full survey but over time most of those trails have grown over. As few years back we met with Beacon Farms to get some advice and explore whether they could do the farming and exchange for taking the excess crop after giving us enough for ourselves. They made the excellent suggestion of getting a drone survey done to help identify



the possible areas to farm. This has now been done. Using this plan, we identified the arable areas and then mapped out access tracks to connect these areas.

For the most part the land is rocky cliff with low shrubs and then rocky areas with taller trees. There are then areas with pockets of red mould. Initially I asked for the access tracks to be restricted to 8 feet wide but was told due to the ruggedness of the land and the machine that had to be used meant a minimum of 12 feet. A truck or SUV is really needed on the track, and you need to go extremely slowly. We have tried to ensure the tracks are only created over the cliff rock and affected the fewest trees possible.

The access has allowed us to now explore most of the significant red mould areas. On each we have found signs of the land having been farmed in the past. These signs include large fruit trees (20 plus and counting), old cooking equipment and an old boundary wall of just under 1,000 feet in length. These access tracks are now complete save for the last few hundred feet to get to the walled area. This area is already mostly clear and is the most likely location of where we would mainly farm.

We have also purchased land on the ocean nearby and our intention is to build a house there once we retire and to keep the Property for farming and hiking. We are both spending time trying to learn more about Cayman's native flora and fauna and intend to protect both alike.

## 2. Planning permission

In the broader sense of the word, it is not our current intention to develop the Property. The proposed use is as set out above and the current plan would be to eventually put the Property in a Foundation for my children.

Here are the relevant provisions of the Development and Planning Act:

13(3) In this Act —

“**development**” means the carrying out of building, engineering or other operations in, on, over or under any land, the making of any material change in the use of any building or other land, or the subdivision of any land, except that the following types of developments shall not require planning permission but shall be subject to all other provisions of this Act and any regulations made under this Act, including the *Building Code Regulations (2021 Revision)*, namely —

(d) the use of any land for the purpose of agriculture (except living accommodation, grazing, dairy farming, the breeding or keeping of livestock, or the farming of turtles in confinement);

Under Cayman's Bill of Rights: [You have a right to enjoy the things that you own. Government cannot interfere with things you own or the way you use them.](#) I think this introduces a degree of materiality, and so the DPA would be interpreted in the proprietor's favour where there is no actual development, and the owner is simply using its own land for its traditional purpose. I did check the large neighbouring farms accessed off Farm Road and was not able to find any planning permission grants for their internal roads.

---

Even if putting in the access tracks are deemed to constitute "development" then it is clearly part of the overall use of the land for purposes of agriculture (for which the property has traditionally been used) and therefore exempt from the requirements of the Act.

### 3. National Conservation Act

In your letter you refer to "all works associated with the 'take' of mangroves and the potential 'take' of Blue Iguana".

I am not aware of any mangroves on any part of the Property but confirm there are none where the access tracks have been put in.

In terms of blue iguanas, I confirm there has been no activity constituting a "take":- means to collect, hunt, kill, destroy, damage, inure, disturb, harass, harm, wound, capture, molest or impede a live specimen in any way or to attempt to do is, and includes incidental taking. In fact, I think the opposite is true and the Property will offer any blue iguanas in the area a sanctuary.

I am hopeful that the above background information is helpful and that with this information, you can conclude, as I do, that there was no basis for the cease and desist order. I would respectfully request that the order be rescinded.

My email is [James.Bergstrom@ogier.com](mailto:James.Bergstrom@ogier.com) and my mobile number is 5169077 if you have any questions.

Yours sincerely

**James Bergstrom**

Partner

Ogier

[\(Website Bio\)](#)

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Beijing | British Virgin Islands | **Cayman Islands** | Guernsey | Hong Kong | Ireland | Jersey | London | Luxembourg | Shanghai | Singapore | Tokyo

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**Kind Regards,**

**Cline Glidden Jr., JP**

Counsel

Ogier

D: +1345 815 1785 | T: +1345 949 9876 | M: +1345 516 1823 |

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**From:** Parchman, Brittney <[Brittney.Parchman2@gov.ky](mailto:Brittney.Parchman2@gov.ky)>

**Sent:** 01 March 2023 9:01 AM

**To:** Cline Glidden <[cline.glidden@ogier.com](mailto:cline.glidden@ogier.com)>

**Cc:** Pandohie, Haroon <[Haroon.Pandohie@gov.ky](mailto:Haroon.Pandohie@gov.ky)>

**Subject:** Block 69A Parcels 29 & 30

**This email originated from outside Ogier**

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Dear Mr. Glidden,

**Re: Block 69A Parcels 29 & 30**

I am emailing you in regards to the above mentioned block & parcels as I was advised that you are one of the owners/representatives of Agouti Group Ltd.

Our department received a complaint from the Department of Environment stating that there was some work being done at the location. Can you advise the nature of the work?

I look forward to hearing from you soon.

Best Regards,

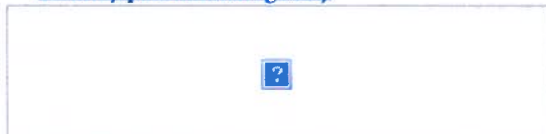
**Brittney Parchman, B.Sc.**

*Senior Compliance Officer*

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