



## **Cayman Islands Government**

### **STATEMENT TO THE PARLIAMENT**

**BY HONOURABLE DWAYNE SEYMOUR, CCI, JP, MP**

**MINISTER FOR SUSTAINABILITY & CLIMATE RESILIENCY AND WELLNESS**

**National Conservation (Amendment) Bill, 2024**

**Date: 31 January 2025**

Mister Speaker, the undeniable fact is that there are several provisions in the National Conservation Act (NCA) that have given rise to difficulties and therefore require amendments to address those difficulties.

Some of those difficulties were highlighted in the Court of Appeal Judgment in the case of Central Planning Authority (CPA) v National Conservation Council (NCC).

There is a legal/policy issue as it relates to the proportionate balance to be struck between the powers given to the NCC to override decisions of other public bodies, (potentially including the constitutionally created Cabinet) and the ability of those other public bodies in the exercise of their own statutory functions.

There is no denying that the extent to which it is desirable to change that balance is ultimately a political question that can only be constitutionally affirmed by this Parliament – which originally enacted the NCA.

Therefore, the proposed amendments would seek to make the legislation more workable without fundamentally undermining the ultimate, policy intention underlying the NCC, in particular the principles that:

- i. All public bodies in exercising their functions should avoid damaging the environment when possible;
- ii. Where environmental harm is likely to result from a public body's activity, it should consult with the NCC before embarking on it.

One of the sections of the law that has given rise to the most difficulty is Section 41 – which imposes a general obligation on all public authorities – and in certain cases gives the NCC the power to veto decisions of such public authorities, or to require the decisions to be taken only subject to certain conditions dictated by the NCC.

In practice however, the NCC's role had been discharged in many cases by the Director of the Department of Environment acting pursuant to a delegated authority, rather than by the whole council. And unfortunately, Mister Speaker, as highlighted in the court of Appeal judgment, those actions don't always conform with the legislation – and in at least one case there was a pre-emptive exercise of the NCC's veto power.

Therefore Mister Speaker, there are some issues with the legislation, which may be summarised as follows:

- a) Should the NCC have unlimited power of veto over the decisions of the other public entities, and if yes, under what circumstances?
- b) Should the obligation to consult with the NCC before making certain types of decision apply to the Cabinet itself?
- c) What, if any changes, should be made to the composition of the NCC?

All these, and many other issues should be discussed in this Parliament at the appropriate juncture to ensure that there is proper realignment of the balance of power under the legislation – not to gut the legislation as some have suggested but rather to ensure proper balance.

By way of example Mister Speaker, the current combined effect of Sections 41(3) and (41(4) means that the NCC potentially has the power to require Cabinet not to take any decision that would be likely to have an adverse impact on the environment, without first carrying out an environment impact assessment (EIA), which must be carried out by a person approved by the NCC and in accordance with any directive of the NCC – (potentially one person – the Director ... and there is no exception for a decision that the Cabinet considers to be urgent, none!

This exists even though the Constitution in Section 44 specifically states that the Cabinet is the body that shall have responsibility for formulating policy and directing the implementation of such policy.

This therefore means that the Director could restrain the Cabinet, which in my considered view is entirely untenable.

Mister Speaker, the Government was also mindful that the existing NCC is in breach of Section 9 (6) of the Public Authorities Act which states that public officers /civil servants should not be entitled to vote and currently the Director has a vote. This, Mister Speaker, is in keeping with good governance and is a worldwide benchmark and good practice.

Mister Speaker, in closing, I would like to take a moment to express my appreciation to the Leader of the Official Opposition and other honourable members of the Official Opposition, as well as the member from Bodden Town West, for their collaborative spirit in working with the Government to ensure that the Parliament is quorate, thereby allowing this Honourable House to convene and fulfil its important responsibilities, to the people of these Islands.

They have demonstrated a commendable understanding of their roles as elected representatives, placing the country's interest above all else. Their commitment underscores the importance of unity during these challenging times.

Mister Speaker, it is therefore the Government's intention, to withdraw the National Conservation (Amendment) Bill, 2024.

Thank you, Mister Speaker, for your indulgence in allowing me to make this statement by virtue of Standing Order Section 30 (1).