

In a ruling released 23 August 2022, the Grand Court of the Cayman Islands confirmed that the National Conservation Act (passed unanimously in 2013) provides the National Conservation Council (NCC) with the ability to direct government bodies in circumstances where actions could have an adverse effect on designated protected areas or the critical habitat of protected species.

Not only does this ruling confirm the legal relationship between the National Conservation Council and the Central Planning Authority, it also clarifies the implications for all other government entities, giving all parties greater certainty and clarity going forward.

In this document, we answer some of your most frequently asked questions about this important Grand Court ruling and what it means for the Cayman Islands.

Q: Does this ruling indicate a change in law or policy in regards to planning approval?

A: No, the ruling does not change anything. The ruling confirms the National Conservation Council (NCC) acted in accordance with the relevant section(s) of the National Conservation Act which was passed unanimously in 2013. It does not set any new precedent.

Q: Does this mean that the NCC can direct the Central Planning Authority (CPA) in any or all planning decisions?

A: No. There are very specific circumstances under which a planning application can be directed to be refused by the NCC.

The limited circumstances are that the planning application has to be assessed by the NCC to be likely to have an adverse effect on a designated protected area, or critical habitat of a protected species.

The vast majority of applications do not involve designated protected areas or critical habitats for protected species. In those cases, the NCC is only able to provide recommendations.

Q: Does this mean that the Director of the Department of Environment can direct the CPA in any or all planning decisions?

A: No. The ruling confirmed that the National Conservation Act allows the NCC to delegate the consultation provisions to the Director of Environment who must act under the same specific process and limited circumstances described above.

Q: Did the Ruling find that either the NCC or the CPA acted unlawfully?

A: The ruling states that the CPA acted unlawfully by failing to act on the instructions issued on behalf of the NCC as it was legally required to do on that application. The ruling also states that neither the NCC nor the Director of the Department of Environment acted unlawfully.

Q: How many applications have the NCC directed be refused since its inception?

A: Since the relevant section of the law came into effect in 2016, the NCC has considered more than 3,000 applications and directed refusal for only seven.

Four of the seven applications related to the same two matters.

0.23%

Since inception in 2016, the NCC has only directed refusal for 7 applications out of 3094 or 0.23%

Q: How is the NCC appointed?

A: In accordance with the National Conservation Act 2013, the National Conservation Council is made up of 13 members:

- Council Member - Appointed By The Cabinet
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- Council Member - Appointed By The Cabinet
- Council Member - Appointed By The Cabinet
- Council Member - Appointed By The Cabinet
- Council Member - Appointed By The Cabinet
- Director – Department of Environment (or nominee)
- Deputy Director of Research – Department of Environment
- Director – Department of Agriculture (or nominee)
- Director – Department of Planning (or nominee)
- National Trust nominee (confirmed and appointed by Cabinet)

The Cabinet Appointees shall include four persons with scientific and technical expertise, and must include one person from each of the six districts. The Chairman is appointed by the Cabinet. The current Chairman is Mr. McFarlane Conolly from East End.

Q: How can an area become designated as protected or a critical habitat?

A: Areas can only be designated as protected, or a critical habitat, through a process under the National Conservation Act, which includes public consultation.

- Proposed Protected Areas are advertised, subject to 90 days of public consultation and ultimately approved by the Cabinet.
- Proposed Critical Habitats are identified and designated under a species conservation plan; they are advertised, subject to 28 days of public consultation and ultimately approved by the Cabinet.

Additional Things To Know

There are three general types of input the NCC can provide in relation to a planning application.

In relation to designated protected areas or critical habitats for protected species, it can provide either conditions of approval or refusals.

CONDITIONS OF APPROVAL are issued when the proposed application would have negative impacts on the designated protected area or critical habitat of a protected species; these conditions are provided to avoid or mitigate the negative impact. Since inception in 2016, the NCC has reviewed 3,094 applications and issued conditions of approval in relation to 62 applications or 2% of applications.

INSTRUCTIONS TO REFUSE are used sparingly and only issued when the potential negative impacts on the designated protected area, or critical habitat of a protected species cannot be mitigated. Since its inception in 2016, the NCC has only issued an instruction to refuse on seven occasions and four of those were in relation to the same two matters.

RECOMMENDATIONS are issued in relation to applications where there is a general impact on the environment but where the applications do not involve a designated protected area, or critical habitat of a protected species.



3,094

The number of planning applications reviewed by the NCC and DoE since September 2016.



2%

Conditions of approval have only been directed for 62 applications representing 2% of all applications reviewed.



0.23%

Refusal has only been directed 7 times for 5 applications; representing 0.23% of all applications reviewed.



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