

## **NCC responds to social media comment of June 18, 2024**

We are aware of a comment currently circulating on social media which seems to suggest there is a subversive and/or undemocratic nature to the functioning of the National Conservation Council and the delegated authority of the Director of the Department of Environment. Upon reviewing the comment more closely, there are a number of factual inaccuracies and incorrect assumptions and statements made which require rectification:

1. *"...subtle change in the law - confirmed by a recent court decision"*

- a. **INCORRECT.** There has been no change to the law. This would require an Act of Parliament. The Court of Appeal judgment simply confirms the correct interpretation of the Act and that the NCC's actions (including their delegations to the Director) were lawful and in line with the provisions of the Act.

*"...that elevates the Department of the Environment over the Cabinet."*

- b. **INCORRECT.** The National Conservation Act does not make Cabinet subservient to the NCC. In fact, s41(4) **specifically PROHIBITS the NCC from directing Cabinet.** Further to this, ALL decisions of the NCC under section 41 may be appealed to Cabinet.
- c. The Cabinet **approves** protected areas which are **recommended** by the NCC and Cabinet **approves** Conservation Plans establishing areas of critical habitat (after approval by the NCC) and this is after public consultation and input. The legislation also allows the NCC to establish Interim Directives creating critical habitat and other conservation measures in an urgent or emergency situation. These Interim Directives **MUST** be immediately reported to Cabinet who may order them to be repealed at any point and they fall away after the approval of a Conservation Plan (by Cabinet) for the species in question.

2. *"...and reliance on the opinion of a single individual over that of our people."*

- a. **INCORRECT.** It is simply not practical for the Council to make technical recommendations on the 500+ applications received annually from the CPA, nor would it be possible for the Director to perform this function on her own. This task requires expertise and skills drawn from the whole department and as such the Technical Review Committee comprised of relevant DoE scientific experts reviews applications to provide the best technical advice. Similarly, the NCC has delegated the issuing of permits and licences to the Director – again there is a team within the DoE who process the applications, based on Licensing Directives gazetted by the NCC.

This is not unique. Several government entities necessarily depend on the work of the civil servants in their respective departments to fulfil their mandates and inform decision-making. For example the CPA has delegated approval of certain types of applications to the Director of Planning.

- b. Other entities consulted by the CPA provide legally binding direction. For example, section 67(1) of the Water Authority Act, 2022 Revision, states that *'the Central Planning Authority shall adopt the recommendations of the Authority in respect to wastewater treatment, disposal and water supply'*; and section 38 of the Public Health Act, 2021 Revision states, *'Where an application is made to the Central Planning Authority under the Development and Planning Regulations (2021 Revision) for approval for the construction of a swimming pool, such application shall be refused unless it is accompanied by a certificate signed by the Senior Medical Officer of Health[.]'*.
3. *"13 members selected by Cabinet , all its power has been delegated to the unelected Director of the Environment,"*
  - a. **INCORRECT.** Cabinet appoints 8 persons. 4 others are appointed by virtue of their Civil Service roles and one other member is appointed by Cabinet based on a nomination from the National Trust.
  - b. The NCC is prohibited by section 13(3) of the Act from delegating certain functions, namely the making of orders and directives to anyone. Only a subset of the NCC's other functions have been delegated to the Director. At the time of drafting the Act, the legislative drafter advised that delegations need to be made to a "legal entity" who can be held accountable – the department is not a legal entity separate from the Cayman Islands Government, whereas the Director of a Department is a recognized legal entity (within the Cayman Islands Government) representing that Department.
4. *"The Director of Environment, who wasn't elected, isn't accountable to the Cayman Islands..."*
  - a. The Director is indeed a non-elected person but this does not mean that neither she nor any other Civil Servant (such as other Directors, Chief Officers, Chief Medical Officer, Deputy Governor, etc.) have no duty to serve the people and country in their technical capacities.
5. *"This law is unusual in Cayman Islands' legal system and in any democratic country..."*
  - a. **INCORRECT.** The National Conservation was drafted by the Government's legal drafting department to ensure consistency with other Cayman Islands laws. Additionally, before it was taken to Parliament the NCA went through several rounds of internal and external stakeholder consultation, as well general public consultation. The one way in which the NCA is unusual is that the requirement for public consultation has been specifically written into the law for many major areas of the NCC's remit, before finally being passed in 2013.

6. *“Expect the NCC and DOE to debate with technical terms, meaningless data...”*

- a. The National Conservation Council is a staunch and unapologetic advocate for evidence-based decision making.
- b. The mandate of the NCC is to supply objective robust, science-based advice and guidance to decision-makers in relation to proposals that may have an adverse effect on the natural environment before irreversible impacts are created.
- c. The NCC has a primary function of making recommendations not taking decisions - it has very limited powers to make actual decisions:
  - i. certain permits for fish pots and spear guns are under their remit;
  - ii. the NCC decide, based on a technical screening opinion produced by the DoE, whether an EIA is needed to provide sound and robust advice to the originating entity be they Cabinet, the CPA, the NRA, etc.; and
  - iii. under section 41(4) when the matter relates to adverse impacts on a protected area or critical habitat of a protected species - both created under processes involving various rounds of public consultation, and with Cabinet approval.