

Central Planning Authority

Agenda for a meeting of the Central Planning Authority to be held on **September 14, 2022 at 10:00am** in **Conference Room 1038, 1st Floor, Government Administration Building, and Elgin Avenue.**

21st Meeting of the Year

CPA/22/22

Mr. Ian Pairaudeau (Chair)
Mr. Handel Whittaker (Deputy Chair)
Mr. Joshua Bernard
Mr. Gillard McLaughlin
Mr. Charles Russell Jr.
Mr. Windel Scott
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/22/22

- 2.1 KIRK WILLIAMS (Craftsman’s Touch) Block 23C Parcel 141 (P22-0068) (\$60,000) (MW)**
4
- 2.2 MUNDY LEWIS (GMJ Home Plans Ltd.) Block 32B Parcel 486 (P22-0227) (\$120,000) (EJ)**
10
- 2.3 TECHNOWALL SYSTEMS LTD. (Cayman Survey Ass.) Block 43D Parcel 164 (P22-0659)**
(\$5,0000) (EJ) 11
- 2.4 MICHELLE P. RAMSAY-ROBINSON (Island Drafting Ltd.) Block 27C Parcel 785 (P19-**
1279) (\$269,235) (BES) 17
- 2.5 GREG SWART (Abernethy & Associates) Block 23C Parcel 227 (P22-0482) (\$2,000) (NP)**
29
- 2.6 NCB HOMES LTD (John Doak Designs) Block 33B Parcel 49 (P21-1178) (NP) 39**
- 2.7 RAMY EL-MADANY (TAG Ltd) Block 23B Parcels 89 and 90 (P22-0215) (\$11.2m) (JP) 11**
- 2.8 MARK SILBURN (Abernethy & Associates) Block 13E Parcel 62 (P22-0695) (\$4,413) (NP)**
20
- 2.9 STEVE BROWN (John Bernard) Block 59A Parcel 321 (P21-0981) (\$275,550) (EJ) 21**
- 2.10 PAMELA MITCHELL (CS Designs) Block 69A Parcel 31 (P22-0672) (\$120,000) (NP) 26**
- 2.11 LORRAINE & DONALD HALL (GMJ Home Plans) Block 4B Parcel 570 (P22-0717)**
(\$100,000) (NP) 29
- 2.12 DIAMOND RENTAL CARS (Paradise Drafting) Block 20C Parcel 141 (P22-0703)**
(\$400,000) (NP) 31
- 2.13 CAYMAN SHORES DEVELOPMENT LTD (Decco Ltd) Block 12D Parcel 95 Block 7**
(P22-0772) (NP) 34
- 2.14 CAYMAN SHORES DEVELOPMENT LTD (Decco Ltd) Block 12D Parcel 33 Block 9**
(P22-0773) (\$000) (NP) 34
- 2.15 CI AIRPORT AUTHORITY (CIAA) Block 20C Parcel 78 (P22-0629) (\$75,020) (NP) 36**
- 2.16 LOUIS CONA – Governors Square (Frederick & McCrae) Block 11D Parcel 92 (P22-0808)**
(\$50,000) (NP) 38
- 2.17 EML Holdings Ltd (MJM Design Studio) Block 20B Parcel 211 (P22-0685) (\$1.3m) (JP) 39**
- 2.18 BERNICE RICHARDS. (Cayman Survey Ass.) Block 22D Parcel 49 (P22-0777) (\$4,000)**
(EJ) 40

APPLICANTS ATTENDING THE AUTHORITY'S MEETING

Applicant Name	Time	Item	Page
Kirk Williams	10:30	2.1	3
Mundy Lewis	11:00	2.2	9
Technowall Systems Ltd.	11:30	2.3	10
Michelle P. Ramsay-Robinson	1:00	2.4	15
Greg Swart	1:30	2.5	26
NCB Homes Ltd.	2:00	2.6	35

1.1 Confirmation of Minutes CPA/21/22 held on August 31st, August 2022.

1.2 Declarations of Conflicts/Interests

Item	Member

2.0 APPLICATIONS

APPEARANCES (Items 2.1 to Item 2.6)

2.1 KIRK WILLIAMS (Craftsman's Touch) Block 23C Parcel 141 (P22-0068) (\$60,000) (MW)

Application for repair garage consisting of two shipping containers with a covered area.

Appearance at 10:30

FACTS

<i>Location</i>	Shamrock Rd., George Town
<i>Zoning</i>	Neighbourhood Commercial
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	0.50 ac. (21,780 sq. ft.)
<i>Parcel size required</i>	20,000 sq. ft.
<i>Current use</i>	Vacant
<i>Proposed building size</i>	1,642.38 sq. ft.
<i>Total building site coverage</i>	7.54%
<i>Required parking</i>	5.47 spaces
<i>Proposed parking</i>	6 spaces

BACKGROUND

June 22, 2022 (CPA/16/22; item 2.25) – the application was adjourned to invite in the applicant to discuss concerns regarding the zoning and the aesthetics of the development

Recommendation: Discuss the application for the following reasons:

- 1) Zoning
- 2) Aesthetics

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 & Disposal

- *The developer shall provide a **septic tank** with a capacity of at least 1,000 US gallons for the proposed auto mechanic garage.*
- *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.** 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).*
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.*
 - *A 30ft horizontal separation between the effluent disposal well and any stormwater drainage wells.*

Water Resource Protection

The site operator and staff shall, at all times, employ Best Management Practices (BMPs) to prevent contamination of water resources by accidental spills of hazardous materials stored / used at the facility. BMPs shall include the following:

- *Vehicle service and other industrial workshops where fuels, greases, oils or solvents are stored and/or handled shall have all floor drains plumbed to an oil/water separator. The outlet of the separator shall be plumbed to a disposal well. Oil/water separators must meet Water Authority standards, per attached guidelines.*
- *Conduct maintenance and repairs on a non-porous surface (concrete, not asphalt or soil). Protect the concrete work area with a sturdy rain canopy that extends two feet beyond the*

concrete work area. Berm the concrete work area to contain any spills. Use drip pans and oil change catch basins to minimize spills.

- Use dry methods (absorbent material such as sand, cat litter, or rags) to clean up any drips or spills that do occur. Collect soiled absorbent materials for delivery to the George Town Landfill for proper disposal. Call 949-8793 before delivering the wastes.
- Minimize inventory of fluids and chemicals: stock only what is needed in the near term. Store fluids and chemicals in their original containers; transfer fluids using funnels or drum pumps to minimize spills. Use less toxic or nontoxic solvents for parts cleaning; e.g., terpenes and citric acid or microbial or water-based cleaners.
- Collect and store liquid wastes to be recycled in an area protected from the rain. Store wastes in labelled drums with bung closures. Store waste drums within a secondary containment structure designed to contain 110% of the storage capacity. Store lead-acid batteries upright in a single layer, within an acid-resistant secondary containment bin. Limit the amount of wastes stored by regularly delivering them to the George Town Landfill recycling drop-off. Call 949-8793 before delivering the wastes.

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.

National Roads Authority

As per your memo dated February 1st, 2022 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 proposed driveway is located on an un-built section of road. The applicant will need to construct the road to meet minimal **NRA specification for subdivision roads (including drainage conveyance requirement)**, up to the subject parcel. A minimum twenty-four (24) ft. road parcel needs to be provided in order to have adequate access as the NRA does not endorse the use of vehicular ROWs. The NRA advises the CPA to require the applicant contribute to the surface improvements to the vehicular R.O.W.

Per section 7.1 of the NRA specifications, 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. Please have the applicant revised the site plan accordingly.

Road Capacity Issues

The traffic demand to be generated by the above proposed development of 1,642 sq. ft. has been assessed in accordance with ITE Code 942 – Auto Care Centre. The anticipated traffic to be added onto Shamrock Road is as follows:

<i>Expected Daily Trip</i>	<i>AM Peak Hour Total Traffic</i>	<i>AM Peak In</i>	<i>AM Peak Out</i>	<i>PM Peak Hour Total Traffic</i>	<i>PM Peak In</i>	<i>PM Peak Out</i>
38	4	3	1	5	2	3

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

Access and Traffic Management Issues

Two-way driveway aisles shall be a minimum of twenty-two (22) ft wide. Please have applicant revise.

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

A six (6) foot sidewalk shall be constructed on Shamrock Road and Access Road, within the property boundary, to NRA standards. Please have applicant provide.

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 Access Road. 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 Law (2005 Revision). 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.

Department of Environmental Health

This application is not recommended for approval for the following reasons:

- 1. The proposed solid waste facility does not meet the requirements of DEH. This development requires (1) eight cubic yard container with twice per week servicing.*
- 2. The applicant must state the type of work proposed at this development.*
- 3. An eye wash station is required.*
- 4. An oil catchment and storage area is required. The containment area must be able to store 110% of the oil in case of a spill.*

The Authority should be aware the applicant submitted revised plans addressing DEH's above comments, however revised comments were not received at the time of the report.

Department of Environment

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 is man-modified with limited ecological value, therefore, we have no comments at this time.

Fire Department

Approved for Planning Permit Only 02 Feb 22

PLANNING DEPARTMENT ANALYSIS

General

The application is for a 1,642.38 sq. ft. Covered Area with Shipping Containers for an Auto Mechanic Garage be located on Shamrock Rd., George Town.

Zoning

The property is zoned Neighbourhood Commercial. The proposed development is allowed in the zone. However the Department wishes to discuss the following.

Specific Issues

1) Zoning

Section (13)(1)(b) states *“Neighborhood Commercial zones are zones in which the primary use is a less intense form of development of that permitted in a General Commercial zone and which cater principally for the needs of persons resident in, or in the vicinity of, the zone.”*

Section (10) states *“Notwithstanding subregulations (8) and (9), residential development may be permitted on any or all floors of a building in a General Commercial zone, a Neighborhood Commercial zone or a Marine Commercial zone if-*

- (a) the development is a replacement or redevelopment of an existing residential development; or*
- (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.*

An overview of the proposed site shows the surrounding area to be primarily vacant & commercial properties with an existing auto garage at the rear of the proposed site (23C137REM2).

2) Aesthetics

The applicant has proposed the Auto mechanic garage to be constructed out of (2) 40' shipping containers covered by a shingle roof and supported by metal and/or wooden columns, no exterior cladding etc. has been proposed to be added to the shipping containers to change the appearance. The Board should determine if the proposed aesthetically matches or is in unison to the surrounding developments in addition the Department questions will vehicles being worked on be left in the proposed covered bay or left in the proposed parking area. The Department is also of the opinion that should the application be approved landscaping should also be proposed to the fronting side of the property so it is not visible from the main fronting road.

SUPPLEMENTAL ANALYSIS

No changes have been made to the plans.

2.2 MUNDY LEWIS (GMJ Home Plans Ltd.) Block 32B Parcel 486 (P22-0227) (\$120,000) (EJ)

Application for an after-the-fact house addition and 3' metal fence with 5' concrete columns.

Appearance at 11:00

FACTS

<i>Location</i>	Brookshire Way & Walbridge Drive, Lower Valley
<i>Zoning</i>	LDR
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.2384 ac. (10,384 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	house
<i>Proposed building size</i>	382 sq. ft.
<i>Total building site coverage</i>	15.6%

BACKGROUND

February 6, 2019 - The Department granted planning permission for a three-bedroom house.

August 5, 2019 - The Department modified planning permission to adjust house location.

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

- 1) Fence setback from road (0' vs 4').

APPLICANT'S LETTER

"We write on behalf of our client, Ms. Mundy Lewis, with regards to the following variance;

- *A roadside setback- The applicants has requested a variance to allow the after-the-fact fence to remain as built with on the property line instead of the required 4ft setback.*

We request permission for these variations as shown and humbly give the following reasons:

1. *Per section 8(13)(d) of the Planning Regulations, the adjacent property owners been notified and there were no objections:*
2. *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, the neighborhood, or to the public welfare;*

3. *The applicant was not aware of the 4ft setback requirement for a fence along the roadside and assumed that building the fence along the property line would be keeping with numerous existing fences within the subdivision. Note that there are twenty one similar cases within subdivision or that 20% of the properties in the subdivision have already been built on the roadside boundary line.*
4. *Although the columns for the fence are higher, the panels between the columns 32" in height which lends to safe visibility at adjacent intersection.*
5. *It would be cumbersome and costly to relocate the existing fence*
6. *The application complies with all other relevant planning requirements."*

PLANNING DEPARTMENT ANALYSIS

General

The after-the-fact rear porch addition and metal fence with concrete columns is located on the corner of Brookshire Way & Walbridge Drive, Lower Valley.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Fence road setback

Regulations 8 (18) states that walls and fences adjacent to the road shall be setback a minimum of four feet from the road side parcel boundary; however, the 3' metal fence with 5' concrete columns exist at 0' vs 4' along Walbridge Drive.

2.3 TECHNOWALL SYSTEMS LTD. (Cayman Survey Ass.) Block 43D Parcel 164 (P22-0659) (\$5,0000) (EJ)

Application for a two (2) lot subdivision.

Appearance at 11:30

FACTS

<i>Location</i>	Bodden Town Road, Bodden Town
<i>Zoning</i>	LDR
<i>Notification result</i>	One Objector
<i>Parcel size proposed</i>	4.473 ac. (194,843 sq. ft.) 1.48 & 3 acres proposed
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Commercial & Industrial Structures

BACKGROUND

There is a lengthy history of activities on the site, but not directly related to the subdivision.

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

- 1) Proposed access scenarios for Lots A and B
- 2) Objector's concerns

AGENCY COMMENTS

Comments from the Department of Environmental Health and Department of Environment are noted 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).

The application site is man-modified and was predominately cleared and filled and appears to be used as a storage site for vehicles as shown in Figure 1.



Figure 1: LIS 2018 Aerial Imagery showing the Application Site outlined in Red.

The application site was previously part of a wider mangrove wetland habitat with the adjacent parcel 43D163 consisting of secondary wetland habitat. Drainage in this area raises some concerns especially given that site may have contamination from the vehicles that were stored on site. Therefore, a stormwater management plan should be designed for the subdivision as a whole and we would **not** support any clearing or filling of this site at this time. Any further land clearing and filling should be reserved until the development of individual lots is imminent (through the granting of planning permission for development on those particular lots). Any future development including clearing and filling of the resultant lots should be the subject of a separate consultation with the National Conservation Council

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 the impact to the surrounding habitat:

There shall be no land clearing, excavation, filling or development of the resultant parcels 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:

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.

Wastewater Treatment for Existing Structure(s)

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

Change-of-Use with Existing Septic Tank(s)

If the developer proposes to utilize the existing septic tank(s) and/or disposal well(s), 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.*

APPLICANT'S LETTERS

Letter #1

Please find attached our Application to Subdivide 3 Acres from the northern portion of 43D 164, leaving approx. 1.48 Acres as the southern remainder.

Access to the 3 Acre portion will be provided firstly by a 30' vehicular Right of Way over 43A 346 (Salubrious Holdings Ltd.) until it meets Lake Destiny Drive, and then secondly over Lake Destiny Drive itself to Bodden Town Road. Our client has received assurances from Minister Jay Ebanks that Lake Destiny Drive (43D 11) will be Gazetted as a Public Road removing the requirement for an Easement.

Letter #2

This letter serves to confirm that Salubrious Holdings Ltd, the Registered Owner of Block 43A Parcel 346, has made an agreement with Mr. Gilles Langlois of Cl Precast, to grant him or his assigns, a thirty foot (30') Vehicular Right of Way (Easement) from Lake Destiny Drive, along the southern boundary of Block 43A Parcel 346, to the north west corner of Block 43D 164, conditional on the following:

Granting of Planning Permission for his proposed development, Completion of his purchase of Block 43D Parcel 164, Payment of agreed compensation.

OBJECTION LETTER

I would like to draw your attention to the planning application submitted by the owner of block 43 D Parcel 164. We STRONGLY OBJECT to the proposed application for the sub division of the above Block and Parcel. The proposed access to this subdivision has not been identified. There is illegal constructions of The Chez Grill and other buildings on the access road.

The encroachment of the same is extending on our land block 43 D Parcel 16 and 17. For this reason we had contacted the Planning Deputy Director and also a complaint was lodged on the planning portal last year. We also lodged our complaint to the Land and Survey Department and were advised to get the fixed boundary survey done. This was completed in May 2022 and since then has been registered with the Land and Survey Registry. We have also sent legal notice to the owners of the Block 43 D Parcel 164 to remove the existing encroachment from our property.

We would like the Planning Department to take serious action against these illegal encroachments. We hope to have this matter resolved at the earliest.

PLANNING DEPARTMENT ANALYSIS

General

The proposed two (2) lot subdivision located on Bodden Town Road.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Access for Lot A

The applicant is proposing access to Lot A via a proposed easement over 43A 346 which would then lead to Lake Destiny Drive. The applicant is also indicating that it is their understanding that Lake Destiny drive is destined to be gazetted as a public road. While the owner of 43A 346 had provided a letter stating it is their intention to grant the applicant a 30' vehicular easement, to date a signed grant of easement form has not been submitted. Further, a review of Cayman land Info does not indicate that there is a gazetted Boundary Plan for Lake Destiny Drive. NRA was circulate the plan on July 19, 2022, but no comments have been received. The Authority needs to determine if the proposed access arrangement is acceptable.

2) Access for Lot B

The subject parcel, 43D 164, as it exists now, is separated from Bodden Town Road by a narrow strip of land, 43D 165. Proposed Lot B will have the same arrangement. The parcels are currently under the same ownership, but there is no registered vehicular easement over

Parcel 165 in favour of 164 (or the resultant Lot B). The Authority needs to determine if the proposed access arrangement is acceptable.

2.4 MICHELLE P. RAMSAY-ROBINSON (Island Drafting Ltd.) Block 27C Parcel 785 (P19-1279) (\$269,235) (BES)

Application for building additions to existing apartments.

FACTS

<i>Location</i>	Bayfield Cres and Hopefield Drive
<i>Zoning</i>	LDR
<i>Notification result</i>	No Objectors
<i>Parcel Size Proposed</i>	0.3155 ac or (13,743.2 sq. ft.)
<i>Parcel Size Required</i>	25,000 sq. ft.
<i>Current Use</i>	apartments
<i>Proposed Use</i>	apartments
<i>Building Size</i>	1,737 sq. ft.
<i>Building Footprint</i>	4,113 sq ft
<i>Building Site Coverage</i>	29.9%
<i>Allowable Units</i>	4
<i>Proposed Units</i>	2 + 5 existing units
<i>Allowable bedrooms</i>	8
<i>Proposed bedrooms</i>	4 + 5 existing bedrooms
<i>Required Parking</i>	11
<i>Proposed Parking</i>	6

BACKGROUND

The file was not located for planning history.

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

- 1) Suitability of the site for apartments.
- 2) Lot size
- 3) Density
- 4) Parking requirements

AGENCY COMMENTS

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

Department of Environment

Under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Law, 2013), the Department of Environment (DoE) confirms that there are no comments at this time, as the site is man-modified with limited ecological value

National Roads Authority

As per your memo dated December 11th 2019 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 two (2) multi-family units has been assessed in accordance with ITE Code 220. Thus, the assumed average trip rates per dwelling unit provided by ITE for estimating the daily, AM and PM peak hour trips are 6.63, 0.51 and 0.62 respectively. The anticipated traffic to be added onto Hopefield Drive is as follows:

<i>Expected Daily Trip</i>	<i>AM Peak Hour Total Traffic</i>	<i>AM Peak 16% In</i>	<i>AM Peak 84% Out</i>	<i>PM Peak Hour Total Traffic</i>	<i>PM Peak 67% In</i>	<i>PM Peak 33% Out</i>
<i>13</i>	<i>1</i>	<i>0</i>	<i>2</i>	<i>2</i>	<i>2</i>	<i>0</i>

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

Access and Traffic Management Issues

As per NRA subdivision guidelines, a single family, residential driveway may be no closer to each other than twenty feet (20') and, must be a minimum of thirty feet (30') from intersections. The driveway on Bayfield Crescent as designed does not meet these guidelines, it is suggested that the applicant rework the parking lot to be on Hopefield Drive.

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

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

A six (6) foot sidewalk shall be constructed on Hopefield and Bayfield Crescent, 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 Hopefield 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 Law (2005 Revision). 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.

Department of Environmental Health

Please see the department's comments on the above application:

1. *DEH has no objection to the proposed in principle.*

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 with a capacity of at least (2,000) us gallons for the proposed. 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.*
- *an approved lint interceptor is required for coin-operated laundries. the developer is required to submit specifications for all laundry (washer) equipment to the water authority for determination of the required capacity of interceptor. specifications can be sent via email to development.control@waterauthority.ky*
- *treated effluent from the septic tank 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 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.*

Change Of Use W/ 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 septic tank inspection form that can be downloaded from the water authority's website via the following link: <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

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.

Fire Service

The CFO approved the site layout.

APPLICANT'S LETTER

We have submitted an application on behalf of Michelle Ramsay-Robinson on the above mentioned block and parcel number and she would like to add to the current building structure which has been in existence for over 20 years.

The reason Mrs. Ramsay-Robinson is applying for this addition is that the available property would lend to her the accessibility to have it developed for her retirement benefit, and once this is done, would yield it's full potential. Due to the cost of purchasing the property, within the area, there appears also other buildings which are of similar nature to this application and as such have converted the existing property into multiple residential accommodation.

The parcel has a registered area of approximately 13,743.20 sq.ft which would fall short of the minimum area required by 11,256.80 sq. ft but the minimum should be (25000.00 sq. ft) under the Planning Law regulation 8 (I) of the development which would allow for the building of these proposed apartments approval in order to move forward with construction.

Notwithstanding regulation 8 (13) (b) (iii) the proposal will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighborhood, nor to the public welfare;

And notwithstanding regulation 8 (13) (d) 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 adjoining property owners have been notified of the application.

As submitted, we would therefore like to request a lot size and density variance to be granted so as to allow the proposed apartments to be fully approved.

We look forward to the Board's favorable decision to this request and await response at your earliest convenience.

PLANNING DEPARTMENT ANALYSIS

General

The application is for two apartments with four bedrooms at the above-captioned property. The site is located on Bayfield Cres and Hopefield Drive.

There are two existing structures on site. One appears to be a previous house that was converted into 3 apartment units sometime after 2004. The other building is a small detached dwelling unit. The photographs taken by the Department clearly show the apartment unit doors numbered 1 through 4.

The current application proposes to add to the main structure a ground floor double garage with a two bedroom dwelling unit on the second floor. The application also proposes another addition to the other end of the main structure consisting of a two bedroom unit with laundry/utility room.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Suitability

The surrounding land use in the area are dwelling houses, apartments (27C767), and vacant properties. In LDR areas, detached and semi-detached houses, duplexes and, in suitable locations, guest houses and apartments are permissible.

2) Lot Size

The proposed lot size is 13,743.2 sq. ft., whereas the minimum lot size is 25,000 sq ft for apartments in the LDR zone per Regulation 9(8)(f).

3) Density

Per Regulation 9(8)(c), the maximum allowable apartments and bedrooms are 4 and 7 respectively. Based on existing and proposed buildings, there would be 7 apartments and 9 bedrooms.

4) Parking Requirements

The number of required parking spaces would be 11, whereas 6 have been provided.

5) Site Inspection Photos

On August 17, 2022, a site inspection was conducted at the property, and it was observed that three external doors were numbered in the main dwelling unit and the smaller structure door numbered 2 with an LPG tank at the southwest corner of the property was shown.

Site photos below:



17 Aug 2022 at 10:34:05 AM













2.5 GREG SWART (Abernethy & Associates) Block 23C Parcel 227 (P22-0482) (\$2,000) (NP)

Application for a 2 lot subdivision

Appearance at 1:30

FACTS

Location

Prospect Point Road

Zoning

Beach Resort Residential

Notification Results

No objectors

Proposed Parcel size

43,260 sq ft & 32,935 sq ft

Parcel size required

10,000 sq. ft.

Current use

House

BACKGROUND

August 4, 2021 (CPA/16/21; Item 2.14) – The Authority granted planning permission for a house, guest house, pool house, two garages and a pool.

December 8, 2021 – (CPA/25/21; Item 2.3) – in response to an application to modify the August 4 permission, the Authority resolved to adhere to that permission.

July 6, 2022 (CPA/17/22; Item 2.17) – The Authority adjourned the current subdivision application to invite the applicant to appear before the Authority to discuss a concern that the subdivision plan does not show public access to the sea as required by Regulation 15(6). In this regard and for the avoidance of doubt, Section 13(3) of the Development and Planning Act states that “development” includes the subdivision of land and Regulation 15(6) states that where planning permission is granted for a development in a Beach Resort/Residential zone which has a frontage of two hundred feet or more, the Authority shall ensure that a public right of way from the road to the sea is set aside and dedicated; such a right of way shall be a minimum of six feet wide for every two hundred feet of frontage or part thereof. In this instance, the development has a frontage in excess of two hundred feet therefore the subdivision plan must show a minimum 12 foot wide public right of way to the sea.

August 31, 2022 (CPA/21/22; item 2.1) – the application was adjourned at the applicant’s request

Recommendation: Discuss Planning Permission for the following reason:

- 1) Public right-of-way to the sea

AGENCY COMMENTS

The following agencies have submitted comments.

Department of Environment

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 previously provided comments for the subject parcel under Planning application Ref: P21-0574 in June 2021 for a house. The application site is predominately man-modified having been previously cleared, however, there is an area of mangroves as shown outlined in orange in Figure 1 below. The site is also adjacent to a Marine Protected Area – a Marine Reserve.



Figure 1: Aerial Imagery showing the subject parcel with the existing mangroves outlined in orange (LIS 2018).

Mangroves are protected under Schedule 1, Part 2 of the National Conservation Act (2013). It is an offence to remove mangroves unless permission is explicitly sought to remove them either through planning permission or a National Conservation Council Section 20 permit. As the current proposal is for a subdivision and the previous planning application for a house (P21-0574) did not include the removal of the existing mangroves, the mangroves must be retained in accordance with the Species Conservation Plan for Mangroves (2020) under the National Conservation Act (2013).

Retaining the mangroves is beneficial to the property owner as mangroves provide a natural buffer which helps to intercept storm impacts on land, reduce surface water runoff impacts to the marine environment and provide ecosystem services such as habitat for birds and other organisms. With guidance, mangroves can be trimmed to create views without causing severe injury to or killing mangroves.

Should the Central Planning Authority or Department of Planning be minded to grant planning permission for the proposal, we recommend the inclusion of the following conditions:

- 1. Mangroves shall not be removed and shall be retained in their natural state in accordance with the National Conservation Council's Species Conservation Plan for Mangroves (2020).*
- 2. Should there be any trimming of the mangroves, it shall be done in accordance with the DoE's Mangrove Trimming Guidelines available from the DoE's website here: <https://doe.ky/sustainable-development/best-practices-guides/mangrove-trimming-guidance/>.*

APPLICANT'S LETTER

Attached are the registered surveys for 23C 177 and 61. The purpose of this subdivision is to put the parcels back to their original state.

APPLICANT'S ATTORNEY'S LETTERS

Letter #1 (September 6, 2022)

We act and write on behalf of Mr. Greg Swart who is the registered proprietor of Block 23C Parcel 227 and who is the Applicant in respect of the captioned application for planning approval to subdivide his property.

By way of background, the subject parcel was originally two separate parcels of land, neither of which, we are instructed, had any form of public or other prescriptive right of way over it. At some point in time in the past the two original parcels, one of which had an existing house in situ, were consolidated by our client into the current single parcel that now comprises parcel 227.

Subsequently, an application for planning permission in respect of a second single family home which the Applicant intended to build on the subject parcel, was granted by the Central Planning Authority (the "CPA") on 4 August 2021, "the Previous Approval", which our client has not availed himself of or acted upon as yet and which approval he has decided to abandon, in the event the subject approval is granted.

The Previous Approval contained, inter alia, the following condition:

Condition 1 provides that "The applicant shall submit a revised site plan showing a minimum 12' wide public access to the sea along the southern property boundary in accordance with Regulation 15(6) of the Development and Planning Regulations (2021 Revision)..."

Condition 7 goes on to provide: "The public right-of-way required in condition 1) shall be registered".

Our client subsequently requested a modification of the Previous Approval, in respect of the aforementioned Conditions 1 and 7 (the "Conditions") on the basis that there were sufficient reasons for the CPA to grant a variance in respect of Regulation 8(13) which application ("the Modification Application") was refused. Our client then appealed that decision, but, as he subsequently has changed his mind and no longer wants to proceed with the development approved pursuant to the Previous Approval, he has abandoned that appeal and has submitted the current application, which is intended to return the land to its exact configuration prior to the consolidation

Notwithstanding the history of this matter and the fact that our client has chosen to forgo the appeal of the modification request, we stand by our previously advanced legal positions, insofar as the same may relate to the current subdivision application and the validity and enforceability of the existing conditions. In that vein, for ease of reference and for the purposes of the record in respect of this application, please find appended to this letter our previous letter of 25th November 2021, containing the relevant legal arguments which was submitted in regards to the Modification Application.

However, we are hopeful that the CPA will agree that on a proper construction of the relevant provisions of the Development and Planning Regulations, and in particular Regulation 15 (6), any further argument regarding these issues will be avoided.

Having carefully considered his intended use of the Property, our client has now decided that he would like to subdivide the Property into two separate development parcels, such as existed

previously, provided that this would avoid the application of Regulation 15 (6) of the Development and Planning Regulations (2021 Revision) (“the DPR”).

For ease of reference, Regulation 15 (6) provides:

*“Where planning permission is granted **for a development** in a Beach Resort/Residential zone **which has a frontage of two hundred feet or more**, the Authority shall ensure that a public right of way from the road to the sea is set aside and dedicated; such a right of way shall be a minimum of six feet wide for every two hundred feet of frontage or part thereof, and may be within an area set aside for setbacks.”*

We would submit that on a plain and logical interpretation of those provisions, such an access R.O.W. can only be required where the resulting planning permission is for a single development having frontage of more than two hundred feet, and, as the outcome of an application for subdivision will result in having the opposite effect, that is to say, the outcome will be two development lots, each with less than two hundred feet of frontage. Simply put, whilst we accept that the subdivision of land constitutes “development”, and therefore requires planning approval, the permission to subdivide a parcel into two parcels cannot be logically described as permission “for a development”. We would therefore submit that, consequently, Regulation 15 (6) cannot and should not be applied to either of the resulting parcels, as that would amount to an error in law, as well as it would be irrational.

It should also be noted in particular that our client’s parcel was in fact previously two parcels (23C177 and 23C61), , which he subsequently combined to form the larger parcel 227 that now exists. The proposed subdivision is intended to simply partition the current parcel 227 so as to return it to the same the two parcels as it original existed.

Our client simply wishes to now reinstate those two parcels, subject to any necessary and reasonable minor boundary adjustment that may be required for planning purposes. Given those circumstances, it would seem particularly unfair to impose Regulation 15 (6) on the current parcel when the outcome of the permission will be two parcels to which Regulation 15 (6) could and should not be applied.

We would therefore ask the CPA to consider the foregoing and we intend to appear before the CPA at the hearing of this matter on the 13th Instant, with a view to addressing the CPA on this matter.

Letter #2 (November 25, 2021)

We act and write on behalf of Mr. Greg Swart, who is the registered proprietor of Block 23C Parcel 22 and is the Applicant in respect of the captioned application for modification of the planning permission granted in August of this year (P21-0574) (“the Decision”).

For the reasons set out herein, our client is requesting a modification of the Decision in respect of conditions 1 and 7, by way of the deletion of the first sentence of Condition 1 and the deletion of the entirety of Condition 7, on the basis that the same is unlawful and unenforceable, for the reasons set out below:

The Decision provided, inter alia, the following conditions:

1) *“The applicant shall submit a revised site plan showing a minimum 12’ wide public access to the sea along the southern property boundary in accordance with Regulation 15(6) of the Development and Planning Regulations (2021 Revision)...”*

.7) “The public right-of-way required in condition 1) shall be registered”.

For the reasons provided herein, our client submits that there are sufficient reason and exceptional circumstances that allows the CPA to apply the provisions of regulation 8(13), so as to forgo the usually applicable provisions of regulation 15 (6) in order to modify the Decision by way of removal of the conditions set above.

In respect of the requested variance, the relevant parts of regulation 8(13) of the DPR provides:

“Notwithstanding... regulations... 15... the Authority may grant planning permission to carry out development that does not comply with all or any of those provisions... if the Authority is satisfied that —

.(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,

(ii) unusual terrain characteristics limit the site’s development potential; 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...”

Condition 1

Condition 1 of the subject approval requires the applicant to submit a revised site plan showing a minimum 12’ wide public access to the sea along the southern boundary in accordance with Regulation 15(6) of the Development and Planning Regulations, 2021.

Regulation 15(6) of the DPR, as amended pursuant to the Development and Planning (Amendment) Regulations, 2021, provides:

“Where planning permission is granted for a development in a Beach Resort/Residential zone which has a frontage of two hundred feet or more, the Authority shall ensure that a public right of way from the road to the sea is set aside and dedicated; such a right of way shall be a minimum of six feet wide for every two hundred feet of frontage or part thereof, and may be within an area set aside for setbacks.”

It is noted that regulation 32 provides for a similar concept in the Hotel/Tourism zones. It is submitted that most of the coastal lands under Hotel/Tourism zoning, such as the

Seven Mile Beach area, have existing prescriptive rights which are enjoyed by the public to access and use the beach and to access the sea, pursuant to the Prescription Act.

However, there are many areas of coastline in Grand Cayman that are not subject to such prescriptive rights, some of which is zoned Beach Resort/Residential, such as the subject parcel,

which unfortunately, makes the same subject to the provisions of regulation 15(6) of the DPR.

It appears that regulation 15(6) incorrectly presumes that the CPA has the authority in law to grant rights of public access to the sea on private property within the Beach Resort / Residential zones of Grand Cayman, so as to give effect a “dedicated public access” with the same effect as if there were established prescriptive rights of access to the sea. It is submitted that it is likely that this dedicated public access concept may have gone largely unchallenged in areas (such as Seven Mile Beach) which were at the time of the advent of the Development and Planning Law and Regulations already subject to established prescriptive rights, so in such circumstances a challenge to such dedicated public accesses as a condition of planning approval would have been largely

a futile academic exercise. However, the situation is quite different in areas such as the location of the subject parcel, where there are no such established public prescriptive rights, since the coastline was largely mangrove and the water is not ideal for swimming or in-water activities and is not generally navigable by boat.

It is submitted that the provisions of regulation 15 (6) (and regulation 32) are ultra vires the Development and Planning Act and are clearly incompatible with and in flagrant conflict with Section 15 of the Bill of Rights enshrined in the Cayman Islands Constitution Order, 2009 (“the BOR”) insofar as those provisions purports to create a process for the obligatory registration of a right in favour of the public, where such obligatory registration of the purported “dedicated public right” is not even capable of registration under the Registered Land Act.

Taking the last point first, whilst Section 98A of the Registered Land Act (which was introduced in 2017, some 40 years after the advent of the Development and Planning Regulations) provides that “a proprietor of land may, by an instrument in the prescribed form, dedicate his land for public use”, it is clear from the wording of that provision—as well as the provisions of Section 15 of the BOR—that such a process is completely voluntary on the part of the proprietor, and cannot be imposed upon a proprietor, by way of a planning permission or other mandatory or coercive measure.

Secondly, there is no provision in the Development and Planning Act that gives the CPA the right to compulsorily dispossess a landowner of their property or to confer on the public any right of use of private property. That being the case, the provisions of regulation 15 (6) and regulation 32 are, a priori, ultra vires the primary legislation that grants the Development and Planning Regulations legitimacy. In short, those two regulations purport to go beyond the legal scope of their primary legislation and are therefore unlawful and unenforceable.

In any event, Section 15 of the BOR prohibits Government (which in this case would include the CPA) from interfering with the peaceable enjoyment of a person’s property or compulsorily taking possession or acquiring any interest in or right over any person’s property, except in accordance with law without reasonable justification for causing hardship to that person and without lawful provision in the relevant primary legislation for the provision of prompt payment of adequate compensation and for a right of access to the Grand Court regarding that interference and the compensation therefor.

As there is no provision in the Development and Planning Act which gives the CPA the right to

compulsorily dispossess a landowner of any right or to confer on the public a right acquired for that purpose, nor does it provide for compensation for that specific purpose, then any provision in either the primary legislation itself or its subordinate legislation that purports to empower the CPA to grant any public right over private property is incompatible with the provisions of Section 15 of the BOR and any decision made or action taken by the CPA in furtherance of that initiative is in breach of Section 19 (1) of the BOR and would make the CPA (and the Government) subject to a constitutional challenge under Section 26 (1) of the BOR.

Therefore, the provisions of regulation 15 (6) (and regulation 32) creates a myriad of significant legal implications for the CPA where a landowner decides to enforce his constitutional rights as outlined above, rather than to voluntarily donate his land for public use pursuant to Section 98A of the Registered Land Act, as many landowners have done and continue to do, for any number of reasons.

On a collateral point, it is important to note that, as adverted to above, the subject parcel is not comprised of a public prescriptive beach area. Unlike Seven Mile Beach and other parts of the Island, the "beach" on our client's land has not been used by the public. In order for a beach to be "public" there must exist some evidence of public use of the respective area of beach by members of the public for a legally specified period of time, without the owner's consent.

Public beach use rights are provided for pursuant to Section 4 of the Prescription Act (1997 Revision) which provides that:

"When any beach has been used by the public...and any road, track or pathway passing over any land adjoining or adjacent to such beach has been used by the public...without interoption for twenty years, the public shall...have the absolute and indefeasible right to use such beach, land, road, track or pathway, unless it appears that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing."

It is submitted that it is not the case in Grand Cayman that all coastal areas or beaches are automatically subject to public use rights. Indeed, in order to be subject to such rights there must be evidence that there has been continuous, uninterrupted use by the public for at least 20 years (i.e. "long user" or "prescription"). We are instructed that the subject property has not been subject to such long user and so there are no such existing public right of access. Therefore, the imposition of a condition to create a public right of way over our client's property, in the absence of established prescriptive rights, where the public would not be permitted to trespass onto our client's land, would seem to make a nonsense of imposing such a condition.

Furthermore, the seabed adjacent to the subject parcel is extremely shallow and serves as a natural habitat for turtle grass and other underwater vegetation. We are informed that this particular seagrass is ecologically valuable and it is therefore submitted that it would be best to leave the same undisturbed, rather than to promote public access into the sea in this area.

In any event, based on the environs of the coastline in that area, granting access to the sea for the public to use would be highly impractical and is unlikely to serve any useful purpose, and, since there has never been any use of that area by the public, the public's interests would not be adversely impacted if no such condition is imposed.

It is therefore submitted that there is sufficient reason to grant the modification by

permitting a variance based on the exceptional circumstances of this application and it is further submitted that there is good reason for the same in accordance with the prescribed criteria provided under Regulation 8(13)(iii). In short, we would submit that a variance of the usual requirement to provide a dedicated public right of way over private property to what is an unsuitable area for bathing or other in-water activities would not be materially detrimental to any persons in the vicinity, to the adjacent property, or to the neighbourhood, or to the public for that matter.

Condition 7

In respect of Condition 7, that the “The public right-of-way required in condition 1) shall be registered’, it is submitted that this condition goes beyond the legal remit of the CPA insofar as that the CPA has no power to order that a public right of way be registered against a private property. Pursuant to section 92 of the Registered Land Act (2018 Revision) (the “RLA”), it is solely the proprietor of land or a lease who may grant an easement over their land. There is no mention of a process for registration of a dedicated public right of way under Section 92. Simply put, there is no lawful mechanism in place by which the CPA can register a public right of way, nor by which they can force a proprietor to register any right of way of any kind over his property.

Therefore regardless of the CPA’s general power to impose conditions of planning approval, it is a matter of settled law that any condition imposed on planning permission must be lawful and reasonable and designed to achieve some useful planning purpose. These principles are actually enshrined in and reinforced by Section 19 (1) of the BOR, which requires all acts and decisions of public officials to be lawful, rational, proportionate and procedurally fair.

Furthermore, section 98A of the RLA, which was recently introduced, only provides that “a proprietor may, by instrument in the prescribed form, dedicate his land for public use. It may well be that some may think that the introduction of this provision has given legitimacy to the provisions of regulation 15 (6), since it provides for dedication and registration of land for public use. However, the wording of Section 98A is clear, and it is submitted that that the inclusion of such language does not gainsay that anyone else

can dictate to a proprietor that he must dedicate his land or any part of his land, or any interest in his land (such as a right of way) for public use. Furthermore, the same principle applies to the grant of an easement pursuant to section 92 RLA. In any event any grant of a right of way under Section 92 of the RLA would confer a right in rem and, therefore that provision is not capable of conferring an easement in gross to the public, as is the case under the Prescription Act. It is therefore our client’s position that condition 7 is ultra vires the law and consequently unlawful.

Characteristics of the Site

Finally, being acutely aware of the ecological value of mangroves, our client has designed his entire application with the intent to not cause any harm or destruction to the strip of natural mangrove vegetation situated to the north of our client’s property. In order to achieve the aim of maintaining all of the mangroves in situ on the subject parcel, our client requires the herein requested variance, as the imposition of a 12ft public right of way along the southern boundary of our client’s parcel would make it virtually impossible for our client to position the development so as to maintain the mangroves on the property. Our client has intentionally tried to make use of the property in such a way as to preserve as much of the existing mangrove

wetlands as possible, but conditions 1 and 7 are making it impossible for our client to both maintain the mangroves and develop his land. Therefore, given that the proposed public right of way would serve no practical purposes and the variance in respect thereof would cause no identifiable detriment, our client would urge the CPA to give his conservation efforts the necessary support by way of the requested variance.

It therefore stands to reason that, in addition to the question of legitimacy, there is no useful purpose of imposing the provisions of regulation 15 (6), in an area such as the subject parcel.

In all of the circumstances, our client submits that the requested modification meets the criteria provided in Regulation 8(13)(b) and our client therefore respectfully requests that the CPA approve his request for a modification of the Decision so as to remove conditions 1 and 7 and grant the necessary variance pursuant to regulation 8(13) DPR, which would have the added benefit of avoiding a decision which is erroneous in law and challengeable under the Constitution.

Our client wishes to attend and be granted an opportunity to be heard at any CPA meeting on this matter, at which time we would be happy to expand upon and elucidate the matters raised herein if required by the CPA so to do.

PLANNING DEPARTMENT ANALYSIS

General

The subject property is located on Prospect Point Road, near to the memorial site.

The property is currently occupied by an older house and the proposal is to create 2 residential lots. One lot would have 130 feet of frontage on the road and the other would have 106.8 feet of frontage on the road.

Adjacent properties were notified and no objections have been received.

Zoning

The property is zoned Beach Resort Residential.

Planning Issues

1) Right-of-way to the Sea

Regulation 15(6) of the Beach Resort Residential zone states the following:

“Where planning permission is granted for a development in a Beach Resort Residential Zone which has a frontage of 200 feet or more, the Authority shall ensure that a public right of way from the road to the sea is set aside and dedicated; such right of way shall be a minimum of six feet wide for every two hundred feet of frontage or part thereof, and may be within an area set aside for setbacks.”

The Authority is reminded of the reasons for the previous adjournment on July 6, 2022:

It was resolved to adjourn the application and invite the applicant to appear before the Authority to discuss a concern that the subdivision plan does not show public access to the sea as required by Regulation 15(6). In this regard and for the avoidance of doubt, Section 13(3) of the Development and Planning Act states that “development” includes the subdivision of land and Regulation 15(6) states that where planning permission is granted for a development in a Beach Resort/Residential zone which has a frontage of two hundred

feet or more, the Authority shall ensure that a public right of way from the road to the sea is set aside and dedicated; such a right of way shall be a minimum of six feet wide for every two hundred feet of frontage or part thereof. In this instance, the development has a frontage in excess of two hundred feet therefore the subdivision plan must show a minimum 12 foot wide public right of way to the sea.

2.6 NCB HOMES LTD (John Doak Designs) Block 33B Parcel 49 (P21-1178) (NP)

Determine if a condition of approval has been discharged.

FACTS

<i>Location</i>	Rum Point Drive in North Side
<i>Zoning</i>	Low Density Residential
<i>Notification result</i>	Not required
<i>Lot Area</i>	0.6 acres
<i>Gross Floor Area</i>	8,868 sq. ft.
<i>Current use</i>	Vacant

BACKGROUND

December 20, 2021 - Administrative approval for a house and pool was granted subject to the following conditions:

In addition to Building Permit requirements, conditions (1 - 3) listed below shall be met before a Building Permit can be issued.

- 1) The applicant shall provide proof that the site boundaries have been set out on the ground by a licensed land surveyor.*
- 2) The applicant shall prepare and submit a plan for review 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 DoE's Turtle Friendly Lighting: Technical Advice Note (September 2018) available from <https://doe.ky/marine/turtles/tfl/>.*
- 3) The construction drawings for the proposed swimming pool shall be submitted to the Department of Environmental Health. The applicant shall also submit to the Director of Planning the requisite signed certificate certifying that if the pool is constructed in accordance with the submitted plans it will conform to public health requirements.*
- 4) You are required to apply for a Building Permit from the Director of Planning. Construction **shall not** commence prior to the issuance of a Building Permit.*
- 5) 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.*
- 6) Unless specifically authorized otherwise in writing by the Planning Department,*

the development shall be carried out strictly in accordance with the approved plans which you will receive when the above condition is complied with.

- 7) *Construction sites for in-ground swimming pools and spas shall be provided with construction fencing to surround the site from the time that any excavation occurs up to the time of completion. The fencing shall be not less than 4 feet in height.*

Additionally, once construction has started, conditions (8-12) shall be complied with before a final Certificate of Occupancy can be issued.

- 8) *All construction materials shall be stockpiled a minimum of 50 ft from the Mean High Water Mark.*
- 9) *Lighting shall be installed in accordance with the turtle friendly lighting plan which has been reviewed and approved by the DoE. The DoE will inspect the installed lighting for compliance with the approved turtle friendly lighting plan once construction is complete.*
- 10) *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) without the express consent of the DoE.*
- 11) *Beachside construction fencing associated with the works shall be positioned 50ft from the Mean High Water (to maximise turtle nesting habitat) and 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.*
- 12) *Any sand that is to be excavated during construction should be retained on-site and beach quality sand should be placed along the active beach profile. Placement on the beach during turtle nesting season will require the written consent of the DoE, 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 should be the subject of a separate consultation with the National Conservation Council.*
- 13) *You shall obtain a **Final Certificate (of Fitness for Occupancy)** prior to occupying the building.*

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

- 1) Determine if the applicant has discharged the condition of approval 2)

APPLICANT'S LETTERS

Letter #1

Our client who is the applicant for "Adehya" a two storey residence to be built on Rum Point Drive at 33B49, being a north facing property overlooking the reef protected waters to the east of Rum Point Club on an elevated beach ridge with spectacular views over its golden sand beaches, magnificent blue ocean waters and a virtually unobstructed

panoramic aspect. Simply put - an idyllic location and orientation for a beach residence.

In October 2021 our client submitted for planning permission for the beach house which received planning permission on 20th December 2021. On 27th April the Applicant applied for Permits and on 29th June 2022 received the permits which allowed him to start construction. On 13th July, two weeks later as the builder was setting up on site we received notification from BCU which recalled the permits as the Applicant had not satisfied the condition of the planning permission which required the Applicant to submit the Turtle Lighting Plan for review.

Between 9th December 2021 and 29th June 2022 the Applicant shared a number of Turtle Lighting reviews with DoE and it had been our client's belief that the lighting fixture reviews had been fully satisfied as DoE had dictated selections and locations, and that he had provided a solution that met the requirements to minimize the impacts to nesting sea turtles.

Following the recall of the permits we were provided with a review letter addressed to the Planning Dept that the Applicant had never seen nor received. That letter from DoE directs the CPA to refuse the Turtle Lighting solution provided by the Applicant and requires him to install 15% light transmission glass on all beach facing parts of the beach house.

Resulting from the DoE email now received, the Applicant is unclear how matters will move forward, whilst noting:

- 1. The Applicant's permits were recalled due to the Turtle Lighting review failing to obtain DoE approval, however we have since received conditional permission from the Director of Planning to prepare the site, commence setting out and undertake the piling and foundation works while this matter is reviewed and approved.*
- 2. DoE's 25th July 2022 email makes it abundantly clear in their opinion that any solution other than 15% glass tinting is "untenable" and that the Applicant's submission is disapproved in its entirety.*
- 3. In consideration of the resulting impasse, the Applicant is left with no alternative but to bring this matter to the attention of the Director of Planning and the Central Planning Authority hence we have prepared the attached submission which has been uploaded to OPS today in support of our client's proposed screening solution to meet the shading requirement.*

The Applicant proposes a screening method inside of the glass which will exceed the 15% tinted glass. The September 2018 Technical Advice documents promoted by DoE allows for "tinted glass, window film or screen" .

The Applicant has proposed to provide "screen" in the form of drapes/ blackout blinds taking in to account the following:

- The applicant has provided turtle nesting light fixtures on the beach, terrace, pool and house and these have been vetted and are approved specifications already reviewed and promoted by the DoE*
- The proposed screens, in the form of drapes/blinds will exceed the 15% light transmission specs of the glazing being proposed by DoE and therefore will more than minimize the impacts to nesting sea turtles*
- Nesting sea turtles may occasionally visit the subject property at some point each year between May to November, perhaps other times of the year as well, but there are no guarantees they will, however it will be at night, likely not during the sunlit hours. The owners and users of Adehya will have the opportunity to visit the property and enjoy its already described beach, ocean, skies and natural features any day of the year, day or night.*
- During the daylight hours the Owner would wish to enjoy views of the pool, beach, ocean and sky. The natural colours, warmth and enjoyment of those magnificent features would be entirely dampened by the 15% light transmittance. In many ways you cannot describe a house as having glorious panoramic views when you are trying to see through a darkened smoky glass with barely any light transmittance.*

- *The photographs shared by DoE with the Applicant are extremely biased and simply do not show the level of light that one will find at this location which faces north.*
- *For the CPA members consideration, the writer has included in this document photographs taken at a recently completed house a few hundred yards to the east of the Adehya property. We are advised by DoE that the house has the 15% tinted turtle glass. We have included below the writer's report of that visit to that property both in words and photographs which are unedited.*

Letter #2

Today I visited a house known as Rip Kai on Rum Point Drive which DoE has confirmed "turtle glass" is installed.

For Adehya, the applicant has been promoting the fact that the turtle glass has undesirable light transmission and is not ideal for a beach house overlooking our spectacular ocean views. DoE promotes its deep tinting as the only means to minimize the impacts to nesting turtles.

In the order that the photographs that follow:

1. *The house faces north and has a veranda, pool and similar relationship and elevation to the swim pool and turtle beach at Adehya.*
2. *Facing north and having all the deeply tinted traits of a turtle glass, it is virtually impossible to see the interior of the living room, in fact all you see is your own reflection. Today even with my face against the glass I literally could not see the interior of the room inside of the veranda*
3. *This photo is a four panel sliding door set and the view looks from inside to the outside over the pool to the ocean beyond. The glass tint darkens all exterior colours, rather like wearing a deep tinted pair of unpolarized sunglasses*
4. *This photo has one of the sliding glass doors open to reveal the natural colours of the pool and the ocean and sky, in contrast to the tinted glass*
5. *The last photo shows the slider partly open to reveal the natural colours and light outside, in contrast to one glass panel and also two panels overlapping*

Clearly the turtle glass impacts views from within the house, looking out to the pool, ocean and sky during daylight hours. Note also that these doors face north so one can only imagine the compoundingly negative impacts of a set of doors facing south wards.



1. *Elevation facing north to the ocean, noting the smoky darkness of the glass*



2. *View from the pool deck towards the turtle glass which also has insect screening. Notice the glass has reflective appearance. When approaching there is no improvement in the mirrored effect to the extent that you cannot actually see into the Great Room behind.*



3. View out to the pool from inside the Great Room, noting the difference in the colours and brightness of the colours in comparison to the outside reflecting view of the natural colouring of the ocean and sky



4. *View from within the house looking out to the ocean and pool. Notice the change in colouring where the doors have been opened at the middle. The overall impression is that the occupant is in a dark cave.*



5. *This is a pair of sliding doors in the Great Room looking out to the ocean noting the doors are open on the left, single pane of tinted glass then two panes overlapped where it is darkest.*

DoE have contended that the building owner might forget to close the drapes or open the drapes to pass through to the outside. Obviously the same can be said for the owner who has tinted glass if you wanted to step out to the veranda during night time hours. The interior lights are going to shine brightly for either solution.

The dilemma remains for the beach house owner who wishes to enjoy Mother Nature in all her glory / the aquamarine blues of the ocean, our golden beaches, magnificent blue skies and sunset/sunrise oranges and reds available all year round.

None of those marvels are available to the owner of the above photographed house when viewed from within the house.

The “screen” solution being offered by Adehya provides at least the same performance specification as turtle glass and allows turtles to safely nest without any confusion, distraction or otherwise during the five/six or so months that they nest each year. Outside of the nesting season the beach house owner can enjoy unrestrictive daylight and night time views to the ocean, beach and skyward.

The turtle glass proposals being made by DOE are unjustifiably restrictive when other alternatives are more readily available and practically beneficial for homeowners.

DEPARTMENT OF ENVIRONMENT COMMENTS

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

Summary

As reaffirmed in the Judicial Review Cause No: G207 of 2021 between the National Conservation Council and the Central Planning Authority (CPA) and Cayman Property Investments Ltd., once the NCC has found that a proposal will likely result in an adverse effect on a protected area or the critical habitat of a protected species 'the entity has no choice but to apply under s.41(4), whether it agrees with the NCC or not'.

*In this case, the Applicant has requested that the CPA approves the discharge of Condition 2 of the Planning Decision Letter dated 20 December 2021. However, Condition 2 is a condition directed by the Director of the DoE under Section 41(5)(a) of the NCA, under the delegated authority of the NCC under Section 3(13), and therefore outside of the remit of the CPA. The DoE lays out the legal mechanism for appealing a directed condition in its planning submissions. The time period for the Applicant to appeal this condition to Cabinet has passed. The beach at the site has been designated as critical habitat for nesting sea turtles, defined in the NCC'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) (NCA)).*

*The turtle friendly lighting plan submitted is incomplete and **does not** minimise the impacts to sea turtles. The applicant's proposal to utilise window drapes as a means of mitigating the adverse impacts of interior lighting is **not** an acceptable solution as explained below. Allowing the discharge of Condition*

2 would mean that the CPA would be making a decision that would or would be likely to have an adverse effect on the critical habitat of a protected species without the approval of the NCC.

Therefore, 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 CPA refuse the Applicant's request to discharge Condition 2 of the Planning Decision Letter dated 20 December 2021 provided under section 41 (5) (b) of the NCA and that the applicant be referred back to the DoE so that a turtle friendly lighting plan which fulfils Condition 2 of the Planning Decision Letter dated 20 December 2021 can be agreed and approved by the DoE.

Importance of Blocking Interior Lighting and Why Drapes are not a Suitable Alternative

Interior lights cause misorientations for sea turtles. Window tinting is a requirement in the Turtle Friendly Lighting: Technical Advice Note September 2018, which states:

- *The notes section on the dimensioned drawing and construction plans should specify which windows, doors and/or walls will have tinted glass or film with a visible light transmittance value of fifteen (15) percent or less.*
- *Interior lighting should not directly, indirectly, or cumulatively illuminate the beach.*
- *Windows and glass doors—including those above the first floor of any multi-storey structures—located within line-of-sight of the beach should be designed for a light transmittance value of 15% or less through the use of tinted glass, window film, or screens.*

As we hope the CPA can appreciate, relying on a property occupant to close their drapes every night at sunset during the turtle nesting season every year introduces an element of human error and a high likelihood of failure. The likelihood of failure increases if the property becomes a vacation or long-term rental. The turtle nesting season equates to more than half of the year with the main season running from May through to November often with some nesting occurring in April and late hatching occurring in December and even early January the following year.

In 2020, three nests misoriented due to interior lights within a property with exterior turtle friendly lighting. This property did have drapes and the occupants were aware that the beach was a sea turtle nesting beach. The DoE's sea turtle volunteer team asked the occupants of the property to close the drapes. However, the occupants did not close the drapes when the nests were hatching and the interior lights caused three nests to misorient on an otherwise turtle-friendly beach.

To clarify, in these three misorientation incidents in this location in 2020:

- *the beach was designated critical habitat for sea turtles,*
- *the property had installed turtle friendly lighting as part of our retrofit programme,*
- *the surrounding area was also turtle-friendly, including streetlights,*
- *the occupants intended to manage the impact of interior lighting to hatching sea turtles by closing their drapes,*

- they failed to keep the drapes closed when the nests were hatching, and
- a total of **175 baby sea turtles** misoriented, and moved towards the property, along the beach and into the bushes instead of the ocean. It is likely that these turtles all died.

Since the remainder of the beach is entirely turtle friendly with respect to lighting, the misorientation was clearly and undoubtedly caused by interior lights without other compounding factors. **These incidents provide compelling local evidence that failure to install glass tinting has adverse effects on the critical habitat of a protected species.**

Furthermore, following an email from the Applicant, the DoE met with the Florida Fish and Wildlife Conservation Commission (FWC) and the Sea Turtle Conservancy (a Florida-based expert on turtle friendly lighting). Madelyn Rupp, Fisheries and Wildlife Biologist in the Imperiled Species Management Section of the FWC stated, “Coastal construction projects that require a state permit through FDEP are required to use tint with a light transmittance of 45% or less in Florida. Since **45% light transmittance is not sufficient to block interior lighting from being visible from the beach**, FWC staff encourage the use of tint with light transmittance values lower than 45%, ideally at 15%. While this number may initially seem intimidating, neither the aesthetic of the building from outside nor the view from inside the building is compromised.”

For further information on the importance of visible light transmittance for sea turtle conservation, we encourage the CPA and Planning Department to watch the below webinar from the Sea Turtle Conservancy. This link was also sent to the Applicant’s agent Mr John Doak on 05 May 2022: <https://conserveturtles.org/interior-light-skyglow-and-temporary-lighting/>

Figures 1 to 3 below show interior lights impacting the beach, whereas Figure 4 shows a property with 15% VLT installed. Figures 5 and 6 show photos provided by the FWC to illustrate that there is little difference from the inside of the property.



Figure 1. Interior lights impacting the beach even though the exterior lights were retrofitted to turtle friendly lights.



Figure 2. A property with very little window tinting, only one exterior light is on (top right of photo), and the interior light clearly illuminates the sand in front of the beach. This lighting could cause a misorientation.



Figure 3. The same property as Figure 2, with the interior lights severely impacting the beach with light pollution. A key principle of turtle friendly lighting is that the sand cannot be illuminated.



Figure 4. RipKai, which has 12% VLT tint, even though all interior lights are on, the beach in front remains dark.



Figure 5. Looking out from a property with 100 VLT (i.e. no tint) on the left, versus 15% VLT after the retrofit on the right. Photos supplied by FWC.



Figure 6. Looking out from a property with 100 VLT (i.e. no tint) on the left, versus 15% VLT after the retrofit on the right. Photos supplied by FWC.

Comparison with Approved Plans

The DoE has prepared Table 1, based on all approved turtle friendly lighting plans that have arisen via planning conditions, to highlight the level of tint used in other developments. Developments without any windows, glass or interior lighting have been excluded (e.g. beach bars, pathways, pool light etc.).

Table 1. The window tinting proposed for all approved turtle friendly lighting plans with windows/glass and the status as currently understood by the DoE.

Applicant or Property Name	Planning Ref.	Tint (% Visible Light Transmittance)	Status
The Sands	P20-1162	9% Applicant chose to install a VLT which exceeds the required guidelines	Not yet under construction
RipKai	P19-0224	12% Applicant also chose (on their own initiative) to add a second layer of 12% tint on the windows in the Games Room	Installed
Sommerville Residence	P21-0997	12%	Not yet under construction
Everard Leacock	LC-P21-0009	15%	Under construction

Applicant or Property Name	Planning Ref.	Tint (% Visible Light Transmittance)	Status
Rodney and Elaine Graham	P19-1075	15%	Unknown
Seacrest Apartments	P18-0665	15%	Under construction
Coral Beach	P18-1264	15%	Installed
Aqua	P17-0613	15%, later revised to 32% based on product availability in 2022	Under construction
Kimpton Watersports Building	P18-0336	15%	Installed
Robert Darley	P20-0315	32%	Under construction
The Watermark	P18-0534	35%	Under construction
Adam and Katherine Johnson	P19-0664	45%	Under construction
C4 Condominiums	P21-0533	45%	Under construction
Jonathan Crossan and Karyn Bodden	P21-0456	45%	Installed
Fiona Prynn	P21-0023	45%	Not yet under construction
Vida (Barkers Beach Ltd)	P20-0414	65% Property is located inland, is not beachfront, and is behind another beachfront property	Under construction
Stefan Charette House (John Doak as Architect)	P17-0417	0% The previous CPA approved 0% tint without consultation with the NCC, in violation of the NCA	Under construction

As evidenced above, the majority of properties with approved turtle friendly lighting plans have proposed and/or installed 15% VLT or lower. We have allowed variances between 15% and 45% VLT, usually based on product availability from suppliers or for beachside development not located on sea turtle critical nesting habitat. The only property which has higher than 45% VLT tint is one which is located inland, not on the beach but behind another beachfront property and therefore at a much lower risk of causing a misorientation as it is very unlikely to be able to directly illuminate the beach. The only development which has been allowed to have no tint is the Stefan Charette house approved by the previous CPA in violation of the NCA.

Turtle friendly lighting has been a legal requirement in Florida for over 30 years. There are two common thresholds for windows and glass adopted into Florida Ordinances: 15% and 45% VLT. In the 1980s when the ordinances were first mandated by the state of Florida, the model lighting ordinance included 45% VLT. However, interior lighting was still causing misorientations and so many ordinances changed to 15% including Jacksonville Beach, Fort Myers Beach, Franklin County, and Homes Beach.

When the DoE consulted with the Florida Fish and Wildlife Conservation Commission (FWC) and the Sea Turtle Conservancy, they advised that we start at 15% VLT given their experience over the last 30 years in Florida. Many products branded 'turtle friendly glass' were not actually turtle friendly, and were still causing misorientations. For that reason, our guidelines state 15% VLT and we have accepted 15% to 45% VLT.

Current Status of the Applicant's Turtle Friendly Lighting Plan

We have reviewed the further submissions from the Applicant made on 13 August 2022. These submissions contain several inaccuracies in relation to the DoE's feedback and we therefore request that the CPA only rely on information obtained directly from the DoE.

For example, the latest submission states 'our client's screening solution using screens' when no screens are proposed. We trust that we do not need to elaborate on why curtains are not screens, and that solar screens are a product which can have a measured VLT, are semi-permanently mounted into a window- frame and are accompanied by a product sheet/cut sheet.

The Applicant's turtle friendly lighting plan **does not comply with the** DoE's Turtle Friendly Lighting Technical Advice Note: it has not contained any specification for any drapes or screens and states that the windows and doors will have 'appropriate treatments' which is meaningless and cannot be stamped as approved, as it would be unenforceable.

Conclusions

1. Given the several inaccuracies within the applicant's submission, the CPA should only rely on the DoE's submission and direct correspondence from the DoE to represent the views of the DoE. If the CPA wishes for the DoE to present or attend a CPA meeting, we would be happy to present our views in person.
2. The Applicant's turtle friendly lighting plan remains incomplete, **does not** minimise impacts to sea turtles and **is not** in line with the DoE's Turtle Friendly Lighting Technical Advice Note.
3. The beach is designated critical sea turtle nesting habitat under the NCA. Accepting the Applicant's plan with no proposed glass tinting and disregarding the requirement in the DoE's guidance notes to have 15% VLT on all ocean-facing glass is likely to result in an **adverse effect** on the critical habitat of a protected species.
4. Taking into account all of the reasons provided above, granting the request of the Applicant to utilise drapes in order to mitigate the adverse effects of interior lighting on the critical habitat of sea turtles would mean that **the CPA would be making a decision that would or would be likely to have an adverse effect on the critical habitat of a protected species without the approval of the NCC, in contravention of Section 41(4) of the NCA, making that decision unlawful.**

Conditions Directed under Section 41(5)

The conditions included in our original submission were as directed by the Director of the Department of Environment under Section 41(5)(a) of the NCA with express delegation from the NCC under Section 3(13) of the NCA . They were included in full, without objection from the Director of Planning or the CPA, in the planning permission. The Applicant did not appeal the conditions within 21 days to Cabinet. As these are NCC's conditions, considering their fulfillment is not within the CPA's remit and it is for the NCC to discharge this condition.

PLANNING DEPARTMENT ANALYSIS

General

The subject parcel is located on Rum Point Drive in North Side.

The property is presently vacant.

The applicant received administrative planning permission for a house and pool on the property in December of 2021. Conditions of approval were included as required by DOE. There now appears to be a difference of opinion between the applicant and the DOE regarding the details of the turtle lighting plan. The applicant (and agent) and the Department of Environment have been invited to attend the Authority's meeting to discuss this matter.

Zoning

The property is zoned Beach Resort Residential

Specific Issues

1) Condition of approval

The condition of approval in question states:

- 2) *The applicant shall prepare and submit a plan for review 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 DoE's Turtle Friendly Lighting: Technical Advice Note (September 2018) available from <https://doe.ky/marine/turtles/tfl/>.*

For clarity and the avoidance of doubt, the condition does not state that the plan has to be approved by any agency, only that the applicant prepares and submits a plan for review. It is for the Authority to determine if the applicant has discharged this condition.

2.0 APPLICATIONS **APPEARANCES (Items 2.7 to 2.18)**

2.7 RAMY EL-MADANY (TAG Ltd) Block 23B Parcels 89 and 90 (P22-0215) (\$11.2m) (JP)

Application for 16 apartments, pool, wall and 2 signs

FACTS

<i>Location</i>	Shamrock Road, George Town
<i>Zoning</i>	BRR
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	1 ac. (43,560 sq. ft.)
<i>Parcel size required</i>	0.5 ac. (27,780 sq. ft.)
<i>Current use</i>	Vacant
<i>Proposed building size</i>	51,300 sq. ft.
<i>Total building site coverage</i>	29.48%
<i>Allowable units</i>	20
<i>Proposed units</i>	16
<i>Allowable bedrooms</i>	60
<i>Proposed bedrooms</i>	42
<i>Required parking</i>	24
<i>Proposed parking</i>	24

BACKGROUND

June 22nd, 2016 (**CPA/14/16; item 2.2**) – application approved for shoreline modification and fill deposit (P15-0664)

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

- 1) Suitability
- 2) High water mark setback variance (2' 10", 47' 9" and 63' 6" v 75')
- 3) Site functionality
- 4) Wall height
- 5) Building height (61' 9" v 55') and storeys (5 v 4)
- 6) Public right of way

AGENCY COMMENTS

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

Water Authority

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. Requirements for the proposed 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 4,350 US gallons per day (gpd), based on the following calculations.***

BUILDING	UNITS/BLDG	GPD/UNIT	GPD
Basement	0	0	0
Ground Floor	1 x 1-Bed Unit	150gpd/1-Bed	975
	1 x 1-Bed + Den Units	225gpd/1-Bed + Den	
	2 x 2-Bed + Den Units	300gpd/2-Bed + Den	
First Floor	1 x 1-Bed Unit	150gpd/1-Bed Unit	1,125
	3 x 2-Bed + Den Units	300gpd/2-Bed + Den	
	Gym	0	
Second Floor	1 x 1-Bed + Den Unit	225gpd/2-Bed + Den	1,125
	2 x 2-Bed + Den Unit	300gpd/2-Bed + Den	
	1 x 3-Bed Unit	300gpd/3-Bed	
Third Floor	1 x 1-Bed + Den Unit	225gpd/2-Bed + Den	1,125
	2 x 2-Bed + Den Unit	300gpd/2-Bed + Den	
	1 x 3-Bed Unit	300gpd/3-Bed	
TOTAL			4,350 GPD

- 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. 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 4'5" 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.

Traffic Rated Tank and Covers

The drawings indicate the wastewater treatment plant 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.

The Water Authority will not approve buried ATUs with the exception of those proposed under approved designated handicapped parking.

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

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 for review and approval.

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.

National Roads Authority

21.07.2022

More detailed information is needed to complete the review:

- *Slope on driveway;*
- *Width on driveway through the lower corners*

Applicant provided further information on 28th July, however, no additional comments have been received from the NRA.

Department of Environmental Health

Solid Waste Facility:

This development requires (1) 8 cubic yard container with twice 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. Contact development.control@waterauthority.ky for deep well details.

Swimming Pool:

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

Fire Department

Stamped approved plans.

Department of Environment

05.04.2022

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 the terrestrial habitat is therefore of limited ecological value, the mangroves that previously covered the site having been filled by the landowners at that time. The DOE had previously recommended the refusal of the previous application P15-0664 based on the use of an outdated mean high water mark survey (contrary to Development and Planning Regulation requirements) and impacts by the proposed filling to what was then the South Sound Replenishment Zone. Figures 1 and 2 below show the area of the previous filling (indicated by the blue line in figure 1 and shown in site visit photos of figure 2) which was evidently seaward of the mangroves at that time. The area offshore from this parcel is now currently Marine Reserve (Marine Protected Area) which is protected under the National Conservation Act, 2013.



Figure 1: A 2013 aerial image showing the previously proposed sea wall (blue) and the previously proposed building footprints (orange) (source: LIS 2013 and DoE 2015).



Figure 2: Photos taken during a site visit showing the previously proposed area of filling viewed from the south. The area was healthy sea grass beds and mangrove recruitment (DoE 2015).

It is important to ensure that the proposal will not have any unacceptable adverse effects on the Marine Protected Area (MPA) offshore. However, in reviewing the above-mentioned planning application the DOE has concerns regarding potential impacts on the MPA. It appears from submitted plans that the proposed 'Hard Surface Walkway' (which presumably functions as a seawall where it fronts the area of landscaping) extends outside of the applicant's coastal property boundary into the sea and therefore the Marine Protected Area, as shown in figure 3 below. We also note that there are several structures including the 'Hard Surface Walkway', landscape elements and part of the patio that are located seaward of the minimum 50ft coastal setback required in the Development and Planning Regulations (2022). The fire access lane on the western boundary of the proposed development also shows a gradient that would lead to drainage towards the Marine Protected Area, this is likely to result in the spread of surface run-off from the property. Although the DOE reached out to the agent for the application (Tropical Architectural Group) to encourage the revision of the application to remove the part of the proposal which extends out into the sea (which would require Coastal Works approval from Cabinet rather than planning permission) and the parts that encroach into the 50ft coastal setback area, at the time of writing this review, no response has been received.

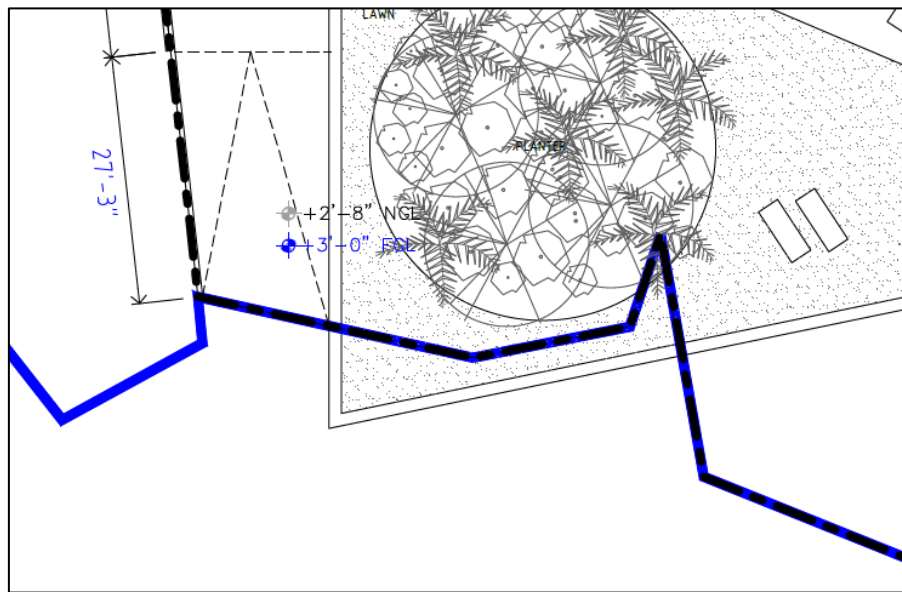


Figure 3: A plan extract for the application showing the area of the proposal that extends outside of the subject parcel coastal boundary and into the Marine Protected Area (TAG 2022).

The Department of Environment is concerned regarding reduced coastal setbacks for developments and strongly maintains its stance that coastal setbacks should not be reduced but instead should be treated as a minimum (as prescribed in the Development and Planning Regulations). Especially in instances where there are no climate-resilient design features incorporated, such as a wash-through ground floor or positioning of the building on elevated pilings to help mitigate against the effects of sea inundation. Setbacks seek to reduce the impacts of storm-related damage on coastal infrastructure. The importance of setbacks is amplified when considered within the context of climate change predictions for the region, which include sea-level rise and increased intensity of storm events (including storm surge). It is imperative that minimum coastal setbacks

are met, not only to reduce the risk of impacts to infrastructure but also to the marine environment. For these reasons, the DOE does **not** support the granting of a variance in the coastal setback.

Based on the current design of the proposed development, 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 you refuse the planning permission under section 41 (5) (b) of the NCA, on the basis that the proposed development will result in direct and indirect impacts on a Marine Protected Area by filling and construction in areas seaward of the mean high water mark and within the required 50ft coastal setback, as outlined in this review.

A person aggrieved by a decision of the National Conservation Council 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).

If the applicant chooses to resubmit an application for reconsideration, the plans shall be revised to remove the sections of the proposal which extend into the Marine Protected Area and revise the elevations so that stormwater is not directly draining into the Marine Protected Area. In addition, we would recommend that the sections of the proposal (including landscaping, the walkway and patio) that encroach into the 50ft coastal setback area be amended to meet the minimum setback as required in the Development and Planning Regulations (2022) and that the applicant considers incorporating climate-resilient features such as a wash-through ground floor. Any proposed works which fall seaward of the Mean High Water Mark will require a Coastal Works application and shall be the subject of Cabinet consideration rather than planning permission.

Revised plans have been submitted and further comments requested.

PLANNING DEPARTMENT ANALYSIS

General

The application site is located in the Prospect area of Grand Cayman bound to the north by Shamrock Road and the Caribbean Sea to the south. An existing residential property

is located to the east and an apartment development is currently under construction to the west.

The application seeks Planning Permission for the construction of a single apartment block containing 16 units, 6' wall, swimming pool and sign.

Zoning

The property is zoned Beach Resort Residential.

Specific Issues

1) Suitability

Regulation 15(2)(d) permits apartments in Beach Resort Residential zones where suitable.

Members are invited to note an apartment complex, currently under construction, is located to the north and west. Beyond this established townhouse developments are located to the east and west.

2) High-water mark setback variance (2' 10", 47' 9" and 63' 6" v 75')

Regulation 8(10)(b) requires a 75' setback from the high-water mark line.

The proposal includes a terraced landscape incorporating a low retaining wall which measures in part 2' 10" from the high-water mark line.

Access steps and a swimming pool is located 47' 9" from the high-water mark.

The apartment building is sited 63' 6" and 48' from the 75' high-water mark line.

Members are invited to consider the acceptability of varying the Regulation requirement.

3) Site functionality

Members are invited to note parking is provided in the basement serviced by a single in-out access along the western boundary. The proposal does not include a dedicated safe pedestrian route. Furthermore, garbage disposal vehicles collect from the refuse storage sited to the east of the application site.

A proposed driveway aisle of 22' is provided, however, due to the shape of the site, location of parking area and the proposed siting and design of the development constrained manoeuvring within the site would result. No visibility of oncoming vehicles or pedestrians would be afforded to refuse vehicles resulting in a potential hazard for site users.

Members are invited to consider the hazardous nature of the site functionality.

4) Wall height

The Fence and Wall Guidelines (2014) sets out *'no part of a solid wall or fence should exceed 48 inches in height'*.

A 6' (72") high solid wall is proposed along the side boundaries.

Members are invited to note parts of the side boundaries shall be filled increasing from natural grade levels of 2' 8" and 3' 2" to 6' 11". The installation of a 6' wall onto the new level of 6' 11" would, in effect, introduce a feature which is up to 10' 3" in height above existing grade level.

Members are invited to consider whether the proposed solid wall is acceptable.

5) Building height (61' 9" v 55') and storeys (5 v 4)

Regulation 8(2)(f) sets a maximum height for buildings in Beach Resort Residential zones of 55' above finished grade level or four storeys.

The development achieves a height of 61' 9" above finished grade level, in parts, along the eastern boundary. The west elevation, which provides access to the parking area, measures 63' 5" above finished grade level. The north facing front elevation measures a height of 62' 5" in part.

The west elevation has five storeys depicted due to the basement parking provision.

Members are invited to consider whether justification exists for varying the Regulation.

6) Public right of way (PROW)

Regulation 15(6) states:

"Where planning permission is granted for a development in a Beach Resort/Residential zone which has a frontage of two hundred feet or more, the Authority shall ensure that a public right of way from the road to the sea is set aside and dedicated; such a right of way shall be a minimum of six feet wide for every two hundred feet of frontage or part thereof, and may be within an area set aside for setbacks."

The site plan incorporates a 6' wide PROW from the road to the sea.

Two issues need addressing regarding provision of a PROW on this site:

- (i) The Regulation sets out that site frontage determines the extent of PROW provision on site. However, the Regulations (see definitions in Regulation 2) are silent regarding where the site frontage is deemed to exist and consequently how the total PROW requirement is calculated.

Properties sited along a shoreline are referred to as beach frontage, however, in the traditional sense the boundary adjacent to the road is typically considered the frontage.

The lot shape is unusual whereby the driveway width bounds the road at a distance of 39' 11". The site then opens up into a typical shaped lot benefitting from a shoreline which measures 264' 8", based upon the HWMS.

Members are invited to consider where the frontage is measured from, which impacts on the provision of a PROW, and subject on that outcome if the width is acceptable.

- (ii) If a PROW is required members attention is drawn to the final part of Regulation 15(6) whereby the placement of a PROW within the setbacks is accepted. However, siting a PROW on a driveway is not identified as an acceptable approach to including such a feature.

Members are invited to closely consider the PROW and vehicular swept path provided on the site plan. As discussed in point 3 above, regarding site functionality, users of the PROW do not benefit from visibility or refuge, from oncoming vehicles, at parts along the driveway. This results in the creation of a dangerous hazard for PROW users.

2.8 MARK SILBURN (Abernethy & Associates) Block 13E Parcel 62 (P22-0695) (\$4,413) (NP)

Application for a 2 lot subdivision.

FACTS

<i>Location</i>	Watlers Road in George Town
<i>Zoning</i>	High Density Residential
<i>Notification Results</i>	No objectors
<i>Parcel size</i>	17,424 sq ft
<i>Parcel size required</i>	5,000 sq. ft. for dwellings and apartments
<i>Parcel width required</i>	60 feet for dwellings 100 feet for apartments
<i>Proposed lot sizes</i>	6,880 and 10,135 sq ft
<i>Current use</i>	3 Dwellings

Recommendation: Discuss the application for the following reasons:

- 1) Width of access road
- 2) Density (Lot 1)

AGENCY COMMENTS

Comments were received from the Department of Environment:

Department of Environment

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 subject property is located in George Town on an offshoot of Watlers Road.

The property currently contains three dwellings and the application is to divide the property into two parcels. Lot 1 would have two dwellings and Lot 2 would have one dwelling.

Proposed lot 1 would have 6,880 square feet and proposed lot 2 would have 10,135 square feet.

Access to the property is from a 15 foot wide road parcel with no name.

Zoning

The property is zoned High Density Residential.

Specific Issues

1) Access road width

The existing property is accessed via an existing 15 foot wide road parcel that is part of Watlers Road which is a public road.

The Authority should discuss whether this road access is suitable for two proposed lots, especially lot 2 which has further development potential.

2) Density

Proposed lot 1 has two dwellings located upon it and should require a minimum lot area of 10,000 square feet based upon Regulation 9(6)(d).

It is noted that there is ample area to provide proposed lot 1 with a minimum lot area of 10,000 square feet.

The Authority should discuss whether the proposed division of land is sufficient for density purposes.

2.9 STEVE BROWN (John Bernard) Block 59A Parcel 321 (P21-0981) (\$275,550) (EJ)

Application for house additions to create 3 apartments.

FACTS

<i>Location</i>	Lariat Road, Frank Sound
<i>Zoning</i>	LDR
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.2905 ac. (12,654 sq. ft.)
<i>Parcel size required</i>	25,000 sq. ft.
<i>Current use</i>	House
<i>Proposed building size</i>	1,137.20 sq. ft.
<i>Total building site coverage</i>	14.3%
<i>Allowable units</i>	4
<i>Proposed units</i>	3
<i>Allowable bedrooms</i>	6
<i>Proposed bedrooms</i>	4
<i>Required parking</i>	5
<i>Proposed parking</i>	6

BACKGROUND

1994 – House granted planning permission.

November 20, 2017 - The Department granted permission for an after-the-fact two-bedroom house.

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

- 1) Lot size variance (12,654 sq. ft. vs 25,000 sq. ft.)
- 2) Parking space width concerns

AGENCY COMMENTS

Comments from the Water Authority, National Roads Authority, Department of Environmental Health, 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:*

BUILDING	UNITS/BLDG	GPD/UNIT	GPD
<i>Existing</i>	<i>1 x 2-Bed Unit</i>	<i>225gpd/2-Bed</i>	<i>225gpd</i>
<i>Studio #1</i>	<i>1 x 1-Bed Unit</i>	<i>150gpd/1-Bed</i>	<i>150gpd</i>
<i>Studio #2</i>	<i>1 x 1-Bed Unit</i>	<i>150gpd/1-Bed</i>	<i>150gpd</i>
TOTAL			525GPD

- *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. 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:

National Roads Authority

As per your memo dated October 22nd 2021 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 three (3) multi-family units

has been assessed in accordance with ITE Code 220. Thus, the assumed average trip rates per

dwelling unit provided by ITE for estimating the daily, AM and PM peak hour trips are 6.65, 051

and 0.62 respectively. The anticipated traffic to be added onto Wrangler Road is as follows:

Expected Daily Tr	AM Peak H Total Traffic	AM 20% In	AM 80% Out	PM Peak H Total Traffic	PM 65% In	PM 35% Out
20	2	0	2	2	1	1

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

Access and Traffic Management Issues

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

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

A six (6) foot sidewalk shall be constructed on Wrangler Road, within the property boundary, to NRA standards. Please have applicant comply, *this may* require shifting the water meters, CUC pole and garbage enclosure behind the sidewalk.

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 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 Wrangler Road. 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 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.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 Environmental Health

Solid Waste Facility:

1. *This development require six (4) thirty three (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.*

APPLICANT'S LETTER

I have obtained permission from Planning and Building Control Unit to construct a two-bedroom house on the above-mentioned parcel and at present while seeking certificate of occupancy, myself and my wife concluded that we need to provide for our children and secure ourselves for the future, therefore, our desire is to add two one-bedroom units to the existing two-bedroom house resulting in three-unit apartment building.

The major obstacle in our desire seems to be the lot size which is under the minimum, however, I am humbly requesting variance in this particular matter, as the surrounding area consist of "residential only" and there are no obnoxious circumstances foreseen or know.

All relevant matters pertaining to this application has been attended to therefore, awaiting your reply.

PLANNING DEPARTMENT ANALYSIS

General

The proposed addition to existing house to create three apartments located on Lariat Drive in Frank Sound, North Side.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Lot size

The proposed three apartments are on a lot existing at 12,654 sq. ft. vs 25,000 sq. ft. or a difference of 12,500 sq. ft. under, as required in Regulations 9 (8)(f) apartments. Therefore, the applicant is seeking a lot size variance.

2) Parking stall width

The proposal requires five parking spaces, whereas the applicant has proposed six spaces; however, at least two of the space do not meet the minimum required width of 8' 6".

2.10 PAMELA MITCHELL (CS Designs) Block 69A Parcel 31 (P22-0672) (\$120,000) (NP)

Application for an after-the-fact house and a proposed addition to the house.

FACTS

<i>Location</i>	Sunnyfield Road in Colliers
<i>Zoning</i>	Agricultural/Residential
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	6.5 acres
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	House

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

- 1) Side setback (8'7" vs 15')

AGENCY COMMENTS

Comments were received from the Department of Environment:

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).

*The application site largely consists of a variety of primary habitats including: primary dry forest, primary dry shrubland and primary seasonally flooded mangrove habitats. However, the area of the parcel where the works are being proposed and have already taken place is man-modified. These primary habitats are of high ecological value and provide a biodiverse habitat for native wildlife including Grand Cayman Blue Iguanas (*Cyclura lewisi*).*

Blue Iguanas

The subject parcel falls within the natural distribution range of the Blue Iguanas that have been released into the Salina Reserve and their presence has been confirmed near Sunnyfield Road. It is therefore highly likely that there are resident Blue Iguanas and Blue Iguana retreats located within the parcel. Blue Iguanas are listed as endangered on the IUCN Red List and they are a Schedule 1, 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 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.

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.

The subject parcel and surrounding area currently serve as a wildlife corridor connecting two extremely important conservation areas: the **Colliers Wilderness Reserve** and the **Salina Reserve** (Figure 1) which are protected by the National Trust for the Cayman Islands under the National Trust Act. Habitat loss and fragmentation are huge threats to our wildlife. Our native species have complex daily requirements that require them to travel safely from place to place, looking for nesting sites, food, water, a resting haven and shelter. With the increased urbanisation of the island, wildlife corridors are vital for the survival of our species. They bridge the gap between habitats which otherwise would be small and isolated and join them together. Linking core wildlife habitats helps to restore and preserve biodiversity, allowing movement between important habitats to maintain genetic diversity in wildlife populations. When populations become isolated, local extinctions can occur.

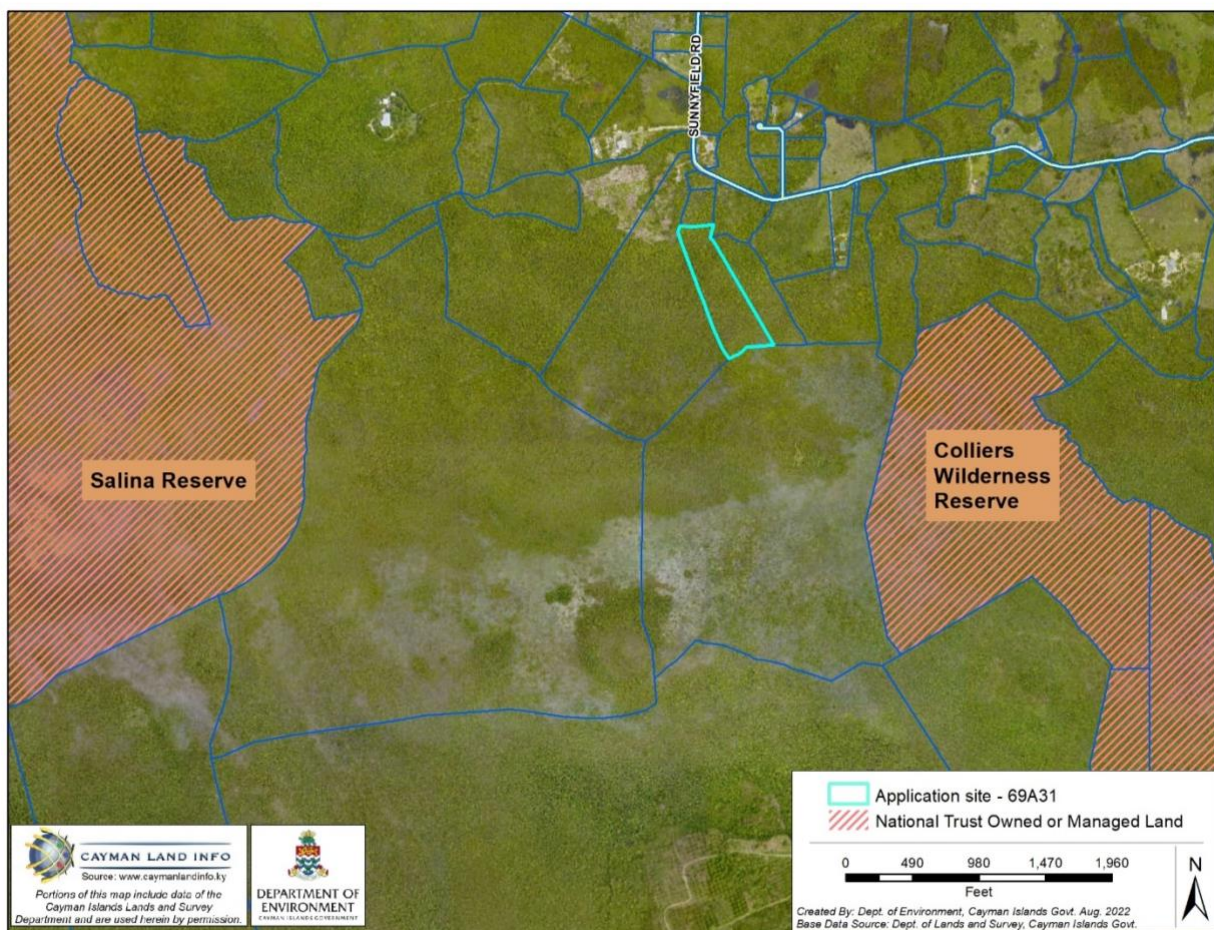


Figure 1: Aerial image showing the subject parcel in relation to the Salina Reserve and Colliers Wilderness Reserve. Base imagery source: Lands & Survey 2018 aerial imagery.

Primary habitat can be retained and utilised in a variety of ways on a parcel:

- It can be retained along parcel boundaries and between buildings to serve as privacy buffers/screening.

- *It can be incorporated into the landscaping schemes for low-maintenance low-cost landscaping.*
- *It can serve as an amenity, providing green space and shade for those who live nearby/on the property.*
- *It can assist with on-site stormwater management and drainage.*
- *It can remain as a habitat for endemic wildlife (helping contribute to the conservation of our local species).*
- *It can help cut back on carbon emissions by leaving the habitat to act as a carbon sink through avoiding its destruction and allowing natural processes to occur which assist with the removal of carbon dioxide in the atmosphere.*
- *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.*

For these reasons, we would not support any further land-clearing on the parcel outside of the proposed scope of works which appears to be located within an already impacted area. Heavy machinery can crush or bury iguanas and their nests. It is therefore crucial that extreme care be taken during construction, particularly during the Blue Iguana nesting season (1 June – 30 September yearly).

Should the Central Planning Authority or Planning Department be minded to grant planning permission for the proposal, the DoE recommends the inclusion of the following conditions to minimise impacts to Blue Iguanas and this important primary habitat.

1. *A walkover survey shall be conducted by the DoE, prior to commencing works on-site, to ensure that no Blue Iguanas or nests are present. The Applicant can write to the DoE at emu.doe@gov.ky to initiate the survey. Written confirmation from the DoE shall be received prior to the issuance of a Building Permit.*
2. *All vegetation outside of the proposed development footprint shall be retained in its natural state and shall not be cleared.*
3. *Any further land clearing, excavation, filling or development of the site shall be the subject of a separate consultation with the Central Planning Authority and the National Conservation Council.*

In addition, the Applicant should be advised that throughout the duration of the site works and construction, appropriate care and attention must be paid to ensure that no iguanas are harmed in the process.

APPLICANT'S LETTER

On behalf of our client, Pamella Mitchell, we are requesting the following variance for the After-the-Fact Cottage with proposed addition to the ground floor level.

- *The proposed addition is 8'-7 ½" from the side boundary (15 feet setback required).*

The existing/ After-the-Fact Cottage was built about 11'-0" from the side boundary and with the addition of the kitchen, living dining at ground level, the corner new stair enclosure that connects to the upper floor, will be about 8'-7 1/2" from the boundary line.

As per Development and Planning Regulations 2021, Sections 8 (13)(B) (iii), we would like to note that the size and the quality of 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 also note that the adjoining and affected property owners have been notified of the application via registered mail.

Given the above, we ask that you consider our request.

PLANNING DEPARTMENT ANALYSIS

General

The subject parcel is located on Sunnyfield Road in Colliers.

The property contains a house on stilts (second floor) without planning permission.

The applicant is seeking after the fact permission for the existing 560 square foot house (second floor) and is also seeking planning permission for a new 737 square foot ground floor addition.

Adjacent landowners were notified and no objections have been received to date.

Zoning

The property is zoned Agricultural/Residential.

Specific Issue

1) Proposed side setback

Regulation 9(8)(j) requires a minimum side setback of 15 feet for a two storey structure.

The proposed corner of the ground floor addition is 8'7" from the west side boundary.

The Authority should consider whether a variance is warranted in this situation.

2.11 LORRAINE & DONALD HALL (GMJ Home Plans) Block 4B Parcel 570 (P22-0717) (\$100,000) (NP)

Application for a duplex additions.

FACTS

<i>Location</i>	Velma Banks Drive in West Bay
<i>Zoning</i>	High Density Residential
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	9,504.8 sq. ft.
<i>Parcel size required</i>	5,000 sq. ft.
<i>Current use</i>	Duplex

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

- 1) rear setback (13'10" vs 20')
- 2) side setback (7' vs 10')

APPLICANT'S LETTER

We write on behalf of our client, Mr. Donald Hall, with regards to the following variances;

- a) A rear setback variance – to allow the proposed addition to unit 1 to be built with a reduced setback of 13'10" instead of the required 20ft. A difference of 6'2".*
- b) A side setback variance – to allow the proposed to be built with a reduced side setback of 7' instead of the required 10'. A difference of 3'*

We request permission for the proposed development per the drawings provided and humbly give the following reasons:

- 1. Per section 8(13)(d) of the Planning Regulations, the owners of the adjacent properties were notified by register mail. There have been no objections to date. Additionally, the owners of the adjacent parcels, 4B568, 4B569, and 4B571 have submitted written consent to the proposed.*
- 2. 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;*
- 3. The adjacent property to the rear, 4B568, has been built closer to the boundary than required. In addition, there are other properties within this community where reduce setbacks exist.*
- 4. There are no other suitable areas to add the proposed media room and gym to this unit. We decided on this location as it also offered the most efficient layout that would maximize the synergy between the unit and the addition.*
- 5. The application complies with all other relevant planning requirements.*

PLANNING DEPARTMENT ANALYSIS

General

The subject parcel is located on Velma Banks Drive in West Bay.

The property contains an existing duplex.

The applicant is seeking planning permission for a 467 square foot additions to one of the duplex units. The additions include a gym and a loft over the living room within the existing roof line.

Zoning

The property is zoned High Density Residential.

Specific Issues

1) Rear setback

Regulation 9(6)(h) requires a minimum rear setback of 20 feet.

The proposed addition is setback 13 feet 10 inches from the rear boundary.

The Authority should consider whether a variance is warranted in this situation.

2) Side setback

Regulation 9(6)(i) requires a minimum side setback of 10 feet for a one storey building.

The proposed addition is setback 7 feet from the side boundary.

The Authority should consider whether a variance is warranted in this situation.

2.12 DIAMOND RENTAL CARS (Paradise Drafting) Block 20C Parcel 141 (P22-0703) (\$400,000) (NP)

Application for a car rental centre.

FACTS

<i>Location</i>	Un-named Road from Owen Roberts Drive in George Town
<i>Zoning</i>	Airport Lands
<i>Current use</i>	Vacant
<i>Proposed Use</i>	Car Rental Centre
<i>Lot Area</i>	17,275.9 sq ft
<i>Footprint</i>	936 sq ft
<i>Required Parking</i>	4 spaces
<i>Proposed Parking</i>	32 Spaces

Recommendation: Discuss Planning Permission for the following reason:

- 1) Temporary shipping container office

AGENCY COMMENTS

The following agencies have provided comments to date:

Department of Environment

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.

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 750 US gallons for the proposed, based on the following calculations:

BUILDING	UNITS/BLDG	GPD/UNIT	GPD
Proposed Rental Car Centre	936 sq. ft.	936 x 0.15 (office factor)	140.4
TOTAL			140.4

- 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.

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.

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.

Fire Department

The Fire Department has stamp approved the drawings.

Cayman Islands Airport Authority

The Cayman Islands Airport Authority has expressed no concerns with the proposal.

PLANNING DEPARTMENT ANALYSIS

General

The proposed car rental centre is located in proximity to Owen Roberts Airport and is accessed via an un-named roadway as well as through an existing car rental complex via an existing right of way.

Zoning

The property is zoned Airport Lands and typically the Authority would apply the zone requirements of the use proposed. In this instance the proposed use is commercial and the requirements of the GC zone have been applied during the review of the proposal.

Specific Issues

1) Temporary shipping container office

The applicant is proposing to use a shipping container as the office for the car rental operation until the main building is completed. The Authority needs to determine if this proposal is acceptable with consideration given to asking the applicant to clad the container to improve the visual appearance. If the Authority deems the use of the container to be acceptable, then a specific time frame should be imposed for its removal from site other than it being removed upon completion of the main building.

2.13 CAYMAN SHORES DEVELOPMENT LTD (Decco Ltd) Block 12D Parcel 95 Block 7 (P22-0772) (NP)

Application to modify planning permission to revise the approved parking lot to reduce the number of tire stops.

FACTS

<i>Location</i>	Nexus & Maris Streets
<i>Zoning</i>	General Commercial
<i>Current use</i>	Parking Lot

Recommendation: Discuss the application for the following reason:

- 1) Removal of internal tire stops in parking area.

APPLICANTS LETTER

Please accept the enclosed application to modify the Block 7 parking area to reduce the number of concrete tire stops. In an effort to achieve greater sustainability and offer improved flexibility of the space, we propose removing most of the tire stops for the internal parking spaces.

They will be in place for spaces adjacent to light poles, EV charging stations, landscape features and walkways.

This request is consistent with CPA's March 19, 2014 decision where members gave their support for only requiring tire stops where parking spaces are located against buildings or walkways.

Tire stops would be optional for internal parking spaces dependent on design (CPA/07/14; Item 6.4).

Included in this submission is a revised site plan illustrating where tire stops will remain.

PLANNING DEPARTMENT ANALYSIS

General

The proposal is to remove the requirement for internal tire stops at the 60 Nexus Way parking lot. This is the site of the new 10 storey office building that is presently under construction.

Notification was not required because the applicant owns the surrounding lands.

Zoning

The property is zoned General Commercial.

2.14 CAYMAN SHORES DEVELOPMENT LTD (Decco Ltd) Block 12D Parcel 33 Block 9 (P22-0773) (\$000) (NP)

Application to modify planning permission to revise the approved parking lot to reduce the number of tire stops.

FACTS

<i>Location</i>	Bismarckia Way & Steve Foster Way
<i>Zoning</i>	Marine Commercial
<i>Current use</i>	Parking Lot

Recommendation: Discuss the application for the following reason:

- 1) Removal of internal tire stops in parking area.

APPLICANTS LETTER

Please accept the enclosed application to modify the Block 9 parking area to reduce the number of concrete tire stops. In an effort to achieve greater sustainability and offer improved flexibility of the space, we propose removing most of the tire stops for the internal parking spaces.

They will be in place for spaces adjacent to light poles, EV charging stations, landscape features and walkways.

This request is consistent with CPA's March 19, 2014 decision where members gave their support for only requiring tire stops where parking spaces are located against buildings or walkways.

Tire stops would be optional for internal parking spaces dependent on design (CPA/07/14; Item 6.4).

Included in this submission is a revised site plan illustrating where tire stops will remain.

PLANNING DEPARTMENT ANALYSIS

General

The proposal is to remove the requirement for internal tire stops at the Block 9 residential apartment building known as Kapok, which is currently under construction.

Notification was not required because the applicant owns the surrounding lands.

Zoning

The property is zoned Marine Commercial.

2.15 CI AIRPORT AUTHORITY (CIAA) Block 20C Parcel 78 (P22-0629) (\$75,020) (NP)

Application for after-the-fact land clearing.

FACTS

<i>Location</i>	Huldah Avenue, George Town
<i>Zoning</i>	Airport Lands
<i>Notification Results</i>	No Objections
<i>Parcel size</i>	343.0 acres
<i>Area to be Cleared</i>	6.03 acres
<i>Current use</i>	Vacant
<i>Proposed use</i>	None

Recommendation: Discuss the application for the following reasons:

- 1) After-the-fact nature of the application
- 2) DOE's comments

AGENCY COMMENTS

Comments from the Department of Environment are noted below:

Department of Environment

*This **updated** 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 after-the-fact and therefore there is no opportunity to provide meaningful feedback on the land clearing activity itself, as the environmental impact has already occurred. The site was semi-permanently flooded grassland although it had been impacted in the past. These freshwater grasslands are a diminishing habitat type in Cayman. According to the National Biodiversity Action Plan 2.T3.2, this habitat type is dominated by Bullrush (Typha) *Typha domingensis*. No justification has been provided in the after-the-fact clearing application, however, we presume that the clearing has been done to remove bird habitat close to the airport operations.*

The DoE reached out to the Cayman Islands Airport Authority (CIAA) last year, when a similar but smaller-scale land clearing was undertaken, to discuss how the clearing could be done in a more sensitive manner. However, CIAA did not respond. If the CIAA would like to discuss the impacts to wildlife, they are encouraged to reach out to the DoE.

The DoE does not consider it good practice to allow the Typha to grow so that it is attractive to birds and other wildlife, only to clear it each year, repeatedly causing distress to the animals and potentially destroying nests or killing wildlife that cannot or does not flee during the works. No input from the DoE was requested from CIAA and no mitigation measures or ecological survey was done with respect to the timing or wildlife present.

The vegetation has been piled into mounds on the site. After we submitted our original comments on 18 July 2022 recommending that no further works take place until a long-term strategy is developed, we were contacted by the CIAA who requested that they be allowed to remove the mounds. They purported that the mounds were impacting airport safety due to the height the CIAA had piled them to. If the CIAA is not able to wait until the master planning exercise is complete and a proper long-term strategy is developed, then the vegetation mounds should be cleared as soon as possible after all requirements of the planning process have been met. The longer the mounds remain in place, the more the Typha will grow back and the more attractive it will be for wildlife to return. They should be removed with care and in a sensitive manner.

A long-term strategy should be developed as part of the airport's development master planning exercise. Apart from the wildlife impacts, consideration should also be given to the stormwater management of the area. Clearing and removing the vegetation reduces the stormwater capacity of the area. There are numerous ways to deter birds beyond crude habitat clearing. Alternative approaches to clearing can be researched and evaluated as a part of the master planning exercise.

APPLICANTS LETTER

Further to Department of Environment feedback on the above referenced after-the-fact planning application, the Cayman Islands Airports Authority (CIAA) responds as follows:

The CIAA management team is committed to minimizing the risk to aviation safety posed by populations of birds and hazardous wildlife on and around our airports and ensuring that remedial action needed to mitigate such risk is implemented. This particular site has been identified as attractive to birds and wildlife, which according to international aviation regulations, the CIAA has an obligation to mitigate through the habitat management project that was undertaken to make the airport less attractive to wildlife and to avoid potential litigation in the event of serious wildlife strikes in the future.

The onsite stockpiled vegetation will have to be removed as a short-term measure to further reduce the risk posed by known wildlife in the area. Further habitat modification will also be needed to manipulate this wetland area to make the area less attractive to problem species.

We recognize that this should be accomplished in accordance with local planning laws and regulations including Cayman Islands government Department of Environment environmental safeguards. As such, the CIAA will work closely with the Planning Department and Department of Environment to negotiate the complexity of mitigating modifications that could include onsite water management through infilling, grading and drainage improvements in the medium and long term. Site specific wildlife mitigation plans will be developed and shared as part of our ongoing airport master plan update study.

PLANNING DEPARTMENT ANALYSIS

General

The subject property is located between Crewe Road and Huldah Avenue in George Town.

The area subject to the application is currently vacant and the application is to obtain after the fact planning permission to clear 6.03 acres of the total 343.0 acres for

aircraft safety purposes. At present there are mounds of cleared vegetation piled on the subject property.

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

Zoning

The property is zoned Airport Lands.

2.16 LOUIS CONA – Governors Square (Frederick & McCrae) Block 11D Parcel 92 (P22-0808) (\$50,000) (NP)

Application for a change of use from a retail bank to a medical office.

FACTS

<i>Location</i>	Governors Square in West Bay
<i>Zoning</i>	Neighbourhood Commercial
<i>Notification Results</i>	Not Required
<i>Parcel size</i>	8.19 acres
<i>Proposed Office Area</i>	4,279 sq ft
<i>Current use</i>	Bank
<i>Proposed Use</i>	Medical Office

Recommendation: Grant planning permission.

PLANNING DEPARTMENT ANALYSIS

General

The subject property is Governors Square on West Bay Road.

The application is for a 4,279 square foot change in use from a retail bank (Butterfield) to a medical office.

Zoning

The property is zoned Neighbourhood Commercial.

2.17 EML Holdings Ltd (MJM Design Studio) Block 20B Parcel 211 (P22-0685) (\$1.3m) (JP)

Applications for an addition to a commercial building through the enclosure of the existing service area; a sign and a site plan modification.

FACTS

<i>Location</i>	Dorcy Drive, George Town
<i>Zoning</i>	LI
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.48 ac. (20,908.8 sq. ft.)
<i>Parcel size required</i>	20,000 sq. ft.
<i>Current use</i>	Light Industrial
<i>Proposed building size</i>	5,338 sq. ft.
<i>Total building site coverage</i>	20.88%
<i>Required parking</i>	6
<i>Proposed parking</i>	14

BACKGROUND

June 1, 1987 (P87-0070) Planning Permission granted for a house

November 7, 1984 (P84-5894) Planning Permission granted for an industrial building

Recommendation: Grant Planning Permission

AGENCY COMMENTS

Comments from the Department of Environmental Health, Fire Department and Department of Environment are noted below.

Department of Environmental Health

No comments received.

Fire Department

Stamped approved plans.

Department of Environment

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 site is located in the Light Industrial area of Dorcy Drive. Historically the site has been used for vehicle servicing, repair and maintenance.

The application seeks Planning Permission to enclose the existing workshop/service area, install a sign on the front elevation and revise the site layout relating to parking spaces and existing gate.

Zoning

The property is zoned Light Industrial.

2.18 BERNICE RICHARDS. (Cayman Survey Ass.) Block 22D Parcel 49 (P22-0777) (\$4,000) (EJ)

Application for a 2 lot subdivision.

FACTS

<i>Location</i>	Selkirk Drive in Red Bay
<i>Zoning</i>	LDR
<i>Notification result</i>	None
<i>Parcel size proposed</i> proposed	0.4913 ac. (21,401 sq. ft.) 0.12 & 0.37 acres
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	House

BACKGROUND

February 2, 2006 - The Department granted permission for a four-bedroom house.

Recommendation: Grant planning permission.

AGENCY COMMENTS

Comments from the Department of Environmental Health and Department of Environment are noted 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). The DoE confirms that we have no comments at this time.

Water Authority Cayman

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.

Wastewater Treatment for Existing Structure

The existing building on the parcel is 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.

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:

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.

APPLICANT'S LETTER

Please find attached our Application to Subdivide a lot measuring approx. 55' x 100' from the rear of 22D 49.

The proprietors of adjacent parcel 22D 98 have agreed to purchase this undersize lot and then Combine it with their parcel. The Phase 2 Combination shown in our Application cannot be completed until the Transfer of Land is Registered.

A Variance on Lot Dimensions & Area is required, but assume that Planning will place a Restriction on "B" compelling its Combination with 22D 98. We make specific reference to Regulation 8(13)(b), and believe this will not have a detrimental effect on the adjacent properties.

PLANNING DEPARTMENT ANALYSIS

General

The proposed two (2) lot subdivision located on Selkirk Drive in Red Bay. The proposal is to create Lot B and then combine it with 22D 98. This is a common occurrence and can be addressed through a condition of approval requiring the combination to be registered.

Zoning

The property is zoned Low Density Residential.

3.0 DEVELOPMENT PLAN MATTERS

4.0 PLANNING APPEAL MATTERS

5.0 MATTERS FROM THE DIRECTOR OF PLANNING

6.0 CPA MEMBERS INFORMATION/DISCUSSION