

# Central Planning Authority

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

## 9<sup>th</sup> Meeting of the Year

CPA/09/24

Mr. Ian Pairaudeau (Chair)

Mr. Handel Whittaker (Deputy Chair) (Acting Chair 2.21)

Mr. Joshua Bernard

Mr. Gillard McLaughlin (left at 4:50)

Mr. Charles Russell Jr.

Mr. Peterkin Berry

Mr. Peter Campbell

Mr. Kenneth Ebanks (via Zoom)

Ms. Danette McLaughlin (left at 4:30)

Ms. Shakina Bush (apologies)

Ms. Christine Maltman, MCIP, AICP (left at 2:20)

Ms. Celecia Bancroft

Mr. Ashton Bodden (left at 4:00)

Mr. Haroon Pandohie (Executive Secretary)

Mr. Ron Sanderson (Deputy Director of Planning - Current Planning) (Acting Executive Secretary items 2.6 and 2.20)

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/09/24

- 2.1 CICALY ELIZABETH ROULSTONE (Tropical Architecture Group Ltd.) Block 14E 5 Parcel 83 (P23-0720) (EJ) 5**
- 2.2 AQUA BAY (Butler Development Group) Block 5D Parcel 4 & Block 5C Parcel 234 (P23-0275) (\$60.0 million) (NP) 8**
- 2.3 LUANA CHRISTINE LOOK LOY (OAD) Block 28D Parcels 128 & 130 (P23-0731) (\$150,000) (NP) 52**
- 2.4 20 NORTH DEVELOPMENT (TAG) Block 5C Parcel 77 (P23-0940) (\$12.658 million) (NP) 65**
- 75
- 2.5 NEAR BY THE SEA INVESTMENTS LTD. (AD Architecture Ltd.) Block 2C Parcels 16 & 179 (P23-0549) (\$160,000) (MW) 75**
- 2.6 OASIS BEACH BAY DEVELOPMENTS (Cayman Survey Ass. Ltd.) Block 38C Parcel 72 (P23-1182) (EJ) 81**
- 2.7 HOME & OUTDOOR WAREHOUSES (Kozaily Designs) Block 19E Parcel 153 (P23-0287) (\$2,000,000) (MW) 88**
- 2.8 YARL HOLDINGS LTD. (National Builders Ltd.) Block 25B Parcel 225 (P23-0581) (\$3,000,000) (MW) 94**
- 2.9 CHARLES WATLER (Abernethy & Associates) Block 32B Parcel 386 (P22-1072) (\$250,000) (NP) 103**
- 2.10 ALBERT THACKER (Tropical Architectural Group Ltd.) Block 28C Parcels 420 & 421 (P23-1030) (\$1,241,400) (MW) 110**
- 2.11 ANTHONY LIDDLE (BDCL Architects) Block 10E Parcel 11 (P23-0606) (\$20,000) (NP) 118**
- 2.12 KIOKO NZOKA MUASYA (Abernethy & Associates) Block 27B Parcel 131 (P23-1161) (\$5,000) (NP) 120**
- 2.13 ANN WORKS (John Doak Architecture) Block 33B Parcel 109 (P23-0676) (\$250,000) (MW) 128**
- 2.14 SOUTH COVE LTD. (Professional Planning and Development Services (PPDS) Cayman Ltd.) Block 61A Parcel 47 (P23-1036) (\$5,000) (MW) 134**
- 2.15 RANSDALE RANKIN (Roland Bodden and Co.) Block 75A Parcel 356 (P23-1083) (\$5,500) (MW) 140**
- 2.16 MARCO ARCHER (Cayman Survey Associates Ltd.) Block 56B Parcel 100 (P24-0009) (\$49,000) (EJ) 144**

- 2.17 TREVOR WATKINS (Eric Cronier Limited) Block 22E Parcel 545 (P23-1188) (\$10,000) (NP) 150**
- 2.18 BARRINGTON OLIVER (Craftman's Touch) Block 32E Parcel 123 (P23-0879) (\$478,693) (MW) 154**
- 2.19 SHANE AND JANET EBANKS (TSC Architecture) Block 2C Parcel 177 (P23-0934) (\$363,750) (EJ) 156**
- 2.20 ALEXANDRA CUGLIARI (Paradise Drafting Ltd.) Block 17A Parcel 144 (P23-1014) (\$25,000) (MW) 159**
- 2.21 THE GROVE TOO (Arco Ltd.) Block 11D Parcel 127 (P23-1001) (\$4,500,000) (MW) 160**
- 2.22 TAMARA BARCLAY (Platinum Crew General Maintenance Repair) Block 55A Parcel 320 (P24-0060) (\$350,000) (JS) 166**
- 2.23 VICTOR THOMPSON (GMJ HOME PLANS LTD) Block 24E Parcel 228 (P23-1178) (\$325,000) (JS) 170**
- 2.24 CHRISTIAN OSHANE (Tropical Architectural Group Ltd) Block 56C Parcel 101 (P23-0878) (\$225,000) (AS) 172**
- 2.25 ROGER SUSINI (LSG DESIGNS) Block 22D Parcel 385 (P24-0065) (\$685,000) (JS) 176**
- 2.26 FITZGERALD WALKER (TSC Architecture) Block 37E Parcel 261 (P23-1174) (\$66,000) (AS) 178**
- 2.27 JASON EBANKS (Abernethy & Associates) Block 43D Parcel 25 (P24-0028) (\$1,000) (NP) 180**
- 2.28 HERITAGE HOLDINGS Block 20C Parcel 86 (P23-0900) (\$8,000) (NP) 184**
- 2.29 SUNRISE LANDING (Whittaker & Watler) Block 27C Parcel 745 (P23-0779) (\$28,000) (NP) 185**
- 2.30 CAYMAN SHORES DEVELOPMENT LTD (Dart) Block 12D Parcel 95 (P24-0040) (\$15,000) (NP) 186**
- 5.1 RCIPS Block 20E Parcel 356 187**
- 5.2 MINISTRY PAHITD 188**
- 5.3 THIN WATER TANKS 188**
- 6.1 DEVELOPMENT PLAN REVIEW 188**

APPLICANTS ATTENDING THE AUTHORITY'S MEETING

Applicant Name	Time	Item	Page
Cicily Elizabeth Roulstone	10:30	2.1	5
Aqua Bay	11:00	2.2	8
Astral Pre-School	1:30	2.3	52
20 North Apts	2:00	2.4	65

**1.1 Confirmation of Minutes CPA/07/24 held on 28<sup>th</sup> February 2024**

**Moved:** Kenneth Ebanks

**Seconded:** Christine Maltman

**Confirmed**

**1.2 Declarations of Conflicts/Interests**

Item	Member
2.2	Christine Maltman, Kenneth Ebanks
2.3	Kenneth Ebanks
2.6	Haroon Pandohie, Joshua Bernard
2.8	Charles Russell
2.19	Peter Campbell
2.20	Haroon Pandohie
2.21	Ian Pairaudeau

**2.0 APPLICATIONS**  
**APPEARANCES (Items 2.1 to Item 2.4)**

**2.1 CICYL ELIZABETH ROULSTONE (Tropical Architecture Group Ltd.) Block 14E  
Parcel 83 (P23-0720) (EJ)**

Application for after-the-fact four (4') & six (6') wood and wire fence with wood columns.

**An appearance was scheduled for 10:30am, but the Authority was unable to consider the application until 11:00am. It appears that the applicant was in attendance in the building, but left before the Authority was in a position to consider the application.**

**FACTS**

<i>Location</i>	South Church Street & Melmac Avenue
<i>Zoning</i>	<b>LDR</b>
<i>Parcel size proposed</i>	0.10 ac. (4,356 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	House & ATF Fence

**BACKGROUND**

House existing prior to 1958.

October 25, 2023 (CPA/25/23; Item 2.13) – It was resolved to adjourn the application and invite the applicant to appear before the Authority to discuss concerns regarding the deficient roadside setback and the visual appearance of the fence.

**Decision:** It was resolved to adjourn the application and invite the applicant to appear before the Authority to discuss concerns regarding the deficient roadside setback and the visual appearance of the fence.

**AGENCY COMMENTS**

The Authority received and considered comments from the National Roads Authority and Department of Environment.

**National Roads Authority**

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

*General Issues*

*Per Regulation 8 (18) of the Development and Planning Regulations (2022 Revision), “Walls and fences adjacent to a road shall be setback a minimum of four feet from the roadside parcel boundary”.*

*The NRA requests that the CPA have the applicant set the fence back to meet this requirement.*

## **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.*

### **APPLICANT’S LETTER**

*Thank you for your enforcement notice regarding the unauthorized wooden fence on our client's property at 14E 83.*

*We would like to explain the circumstances that led to the construction of the fence and request your leniency in this matter.*

*Our client has been a long-time resident of the property, which originally had a concrete wall/fence along the road in the 1950s. Unfortunately, the wall/fence was destroyed by Hurricane Ivan, and our client had to rebuild it using wood as a more affordable and accessible material. Our client was not aware that she needed Planning Permission to repair the fence, as she was simply restoring it to its previous condition.*

*The fence serves an important purpose for our client, as it provides her with privacy and security on her property. She has experienced several incidents of trespassing and theft (tools, equipment, fruits, and rare plants), and the fence is her only means of deterring such unwanted activities.*

*We are also cognizant of the new Planning Regulations that stipulate a minimum setback of 4 feet from the road for any fence or wall. However, we would like to ask for your consideration, as there are some practical challenges that prevent our client from complying with this requirement. First, the water meter bank of the property is located approximately 2 feet from the road, and it needs to be accessible for servicing. Second, without the fence, our client's land would be vulnerable to being used as a parking lot or a turning area for vehicles, which could damage the pipes and incur additional costs for our client. Third, many other properties in the vicinity still have their fences and walls built right up to their property boundaries, creating an inconsistent and unfair situation (see the next page for photos of adjacent properties with existing fences and walls).*

*We hope that you will understand our client's situation and grant her some flexibility in this case. If you have any questions or concerns, please do not hesitate to contact us at the phone numbers and email address below. We appreciate your cooperation and understanding.*



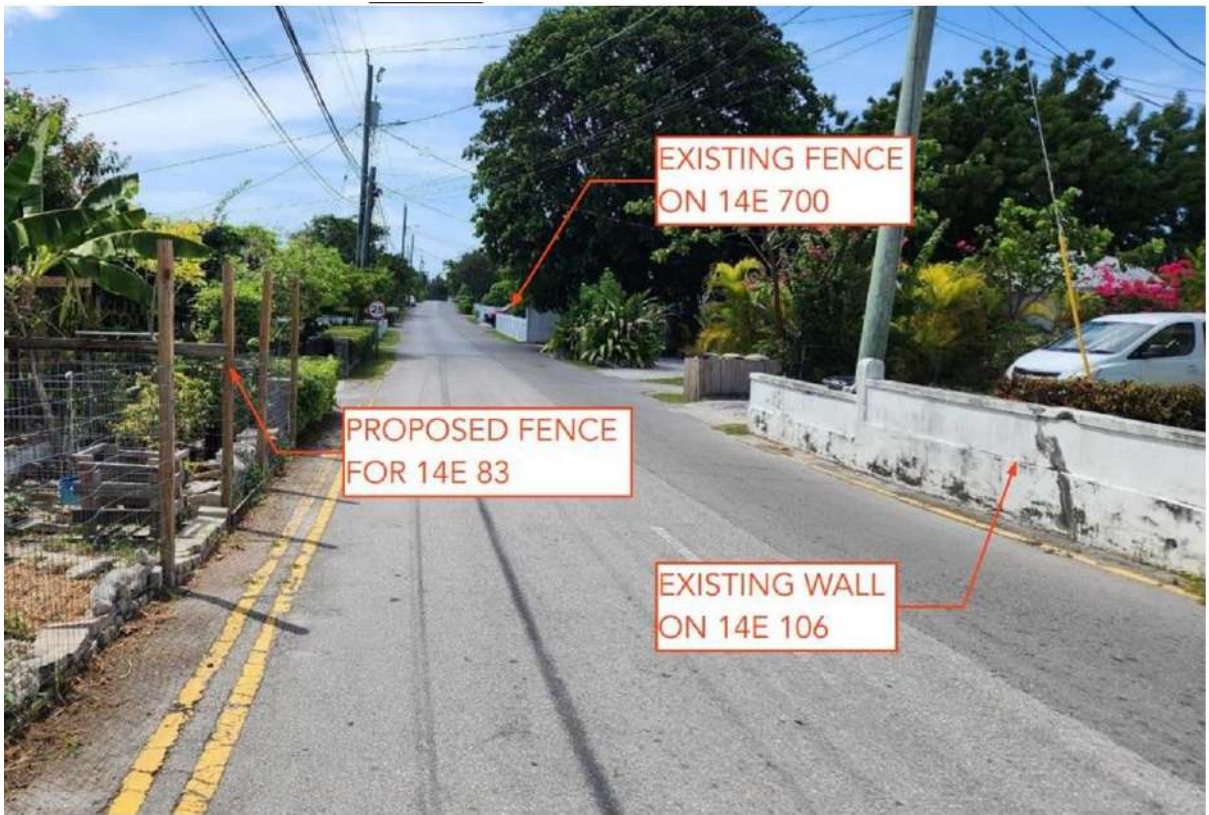
EXISTING WALL  
ON 14E 106



PROPOSED FENCE  
FOR 14E 83

EXISTING FENCE  
ON 14E 85

EXISTING WALL  
ON 14E 84



EXISTING FENCE  
ON 14E 700

PROPOSED FENCE  
FOR 14E 83

EXISTING WALL  
ON 14E 106

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The applicant is seeking after-the-fact permission from the Authority for the 4' & 6 wire and wood located at the corner of South Church Street & Melmac Avenue.

**Zoning**

The property is zoned Low Density Residential.

**Specific Issues**

**1) Wall & fence Road Setback**

The application is the result of enforcement action (CE23-0067); the after-the-fact fence runs the entire length of Melmac Avenue and does not meet regulations 8 (18) for walls and fences adjacent to the road be setback a minimum of four feet from the road-side boundary; therefore, the applicant is seeking permission for the ATF wall which is setback at 0’ vs 4’.

In addition to the aesthetics and whether the fence is in keeping with the character of the area, the Authority is asked to consider the merits of the applicants request and to also consider the NRA comments.

**SUPPLEMENTARY ANALYSIS**

There have been no changes to the plans.

**2.2 AQUA BAY (Butler Development Group) Block 5D Parcel 4 & Block 5C Parcel 234 (P23-0275) (\$60.0 million) (NP)**

Application for 38 apartments & a pool.

**Appearance at 11:00 a.m.**

**Christine Maltman declared a conflict and left the meeting room. Kenneth Ebanks also declared a conflict and was placed in the Zoom waiting room.**

**FACTS**

<i>Location</i>	West Bay Road, West Bay
<i>Zoning</i>	<b>Hotel/Tourism (overlay 1 for building height)</b>
<i>Notification Results</i>	Objections
<i>Parcel size</i>	1.6659 acres (combined) 5D 4 – 1.41 ac 5C 234 - .2559 ac
<i>Parcel size required</i>	0.5 acres
<i>Current use</i>	Apartments & pool
<i>Proposed use</i>	Apartments & pool
<i>Proposed Building Footprint</i>	23,130.1 sq. ft.
<i>Proposed Building Area</i>	159,974.6 sq. ft.
<i>Number of Permitted Apartments</i>	35



<i>Number of Proposed Apartments</i>	38
<i>Site Coverage Permitted</i>	40 %
<i>Site coverage Proposed</i>	36.8 %
<i>Parking Required</i>	57
<i>Parking Proposed</i>	63

## **BACKGROUND**

October 11, 2023 (**CPA/24/23; Item 2.4**) – Prior to a full review under the Development and Planning Act (2021 Revision), The Development Plan 1997 and the Development and Planning Regulations (Rev 2022) and after only reviewing the proposal in detail with the applicant regarding Section 41(3) of the National Conservation Act (2014) (NCA) and reviewing the list of definitions of adverse effects in Section 2 (a-1) of the NCA, it was resolved to adjourn the application and refer the application to the National Conservation Council pursuant to Section 41(3) of the NCA as there may be potential adverse effects.

**Decision:** It was resolved to refuse planning permission for the following reasons:

- 1) Regulation 8(2)(e)(i) states that in Hotel/Tourism zone 1, the maximum permitted height is one hundred and thirty feet or ten storeys, whichever is less.

Regulation 2 defines “height of building” as the vertical distance measured from the highest point on a proposed or existing building to the proposed finished grade directly below that point; and for the purposes of this definition, “finished grade” means the highest grade within five feet of the building and includes natural grade when no terrain alteration is proposed.

Regulation 2 also defines “storey” and this means that portion of a building included between the surface of any floor and the surface of the floor next above or if there be no floor above it, then the space between such floor and the ceiling next above it.

- A) With respect to the proposed building, the proposed parking garage constitutes a storey and the result is an eleven-storey building that would not satisfy Regulation 8(2)(e)(i). The applicant has argued that the parking garage is not a storey per the provisions of Regulation 8(4); namely, a) that that area is non-habitable ancillary space and b) that it is below grade.

In regard to a), the parking garage is not ancillary space. Parking spaces are required by Regulation 8(1) and the applicant has chosen to provide a substantial number of them in the parking garage. These parking spaces are not ancillary to the apartments, they are a primary component of the development. They cannot be considered as ancillary space and therefore this storey is not exempt per Regulation 8(4).

In regard to b), the parking garage is not below grade. The applicant’s building elevations, A.15, A.16 and A.17, clearly demonstrate that the parking garage is not below grade, whether or not that is existing grade or finished grade. Furthermore, the

three building elevations include a note labelling the parking area as Open Covered Parking”. Finally, the applicant was asked repeatedly in the meeting to explain how the parking garage was below grade and the applicant did not provide an answer.

The Authority has no discretion to allow more than 10 storeys. Further, it is noted that there are two levels of rooftop structures which have not been included as storeys per the exemptions listed in Regulation 8(4).

- B) The building level labelled Roof Deck Plan (drawing A.12) includes areas covered by the floor of the mechanical level above. As such, this area is a storey per the definition of same in Regulation 2. Further, this storey does not satisfy any of the criteria listed in Regulation 8(4) and therefore is not exempt from being considered a storey which means this would be a twelfth storey. Specifically, the Authority does not view this area as non-habitable ancillary space as the space is directly tied to the units below them as an integral part of those units which includes cooking and dining facilities.

### **AGENCY COMMENTS**

The Authority received and considered comments from the Water Authority, Fire Department, Department of Environmental Health, National Roads Authority and the Department of Environment.

#### **Water Authority Cayman**

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

##### Wastewater Treatment

*The development shall be connected to the West Bay Beach Sewerage System (WBBSS) as per Section 42 (1) of the Water Authority Act (2022 Revision).*

- *At this time the public sewerage system does not extend as far north as this property. The West Bay Beach Sewerage System (WBBSS) pipeline currently terminates at The Renaissance, approximately 2,200 feet further south. Although the actual timing for this major pipeline extension has not yet been decided, the Water Authority will extend the low-pressure sewer system along West Bay Road up to West Bay Cemetery Beach/West Bay Fire station to accommodate this development.*
- *The developer shall notify the Water Authority’s Engineering Department at 949-2837 EXT: 3000, as soon as possible to ensure that:*
- *the site-specific connection requirements are relayed to the developer,*
- *any existing sewerage appurtenances on the property can be clearly marked to prevent damage (for which the developer would be held responsible), and*
- *the Authority can make necessary arrangements for connection.*

- *The developer shall be responsible for providing the site-specific sewerage infrastructure required for connection to the WBBSS. The site's wastewater infrastructure shall be designed and installed to the Authority's specifications. Copies of the Authority's specifications are available at the Water Authority's office on Red Gate Road, or the web: [http://www.waterauthority.ky/upimages/pagebox/Guidelines-Sewer\\_1425464500\\_1426308023.pdf](http://www.waterauthority.ky/upimages/pagebox/Guidelines-Sewer_1425464500_1426308023.pdf)*
- *The developer shall submit plans for the infrastructure to the Authority for approval.*
- *The Authority shall make the final connection to the WBBSS, the cost of which shall be borne by the developer.*

*The Authority will not be responsible for delays due to insufficient notice from the developer.*

#### *Wastewater Pump Station*

*The developer must provide and install a wastewater pump station for connection to the abovementioned low-pressure sewer.*

- *The pumping station must be equipped with two submersible grinder pumps (one duty and one stand-by).*
- *Each pump must be capable of pumping the wastewater flow generated by this development against a total head of at least 50 feet back pressure PLUS any head losses between the pumps and the point of connection.*
- *Details on the proposed grinder pumps must be submitted to the Water Authority for approval, prior to ordering any materials, to ensure they will be adequate.*
- *It is strongly recommended that this pumping station is provided with emergency power to ensure its proper operation even when no mains power is available.*
- *Please be advised that the operation and maintenance of this wastewater pumping station will remain the responsibility of the Aqua Bay development.*

#### *Elevator Installation*

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

#### *Lint Interceptor Required - Commercial, Institutional & Coin-op Laundries*

*An approved lint interceptor is required for commercial, institutional and 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](mailto:development.control@waterauthority.ky)*

#### *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.*

*Water Supply:*

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

- *The developer is required to notify the Cayman Water Company without delay, to be advised of the site-specific requirements for connection.*

*The developer shall provide water supply infrastructure per CWC's specification and under CWC's supervision.*

**Fire Department**

The Fire Department has requested that the site plan be revised to include the proposed and/or existing fire well and fire hydrant.

**Department of Environmental Health**

*Solid Waste Facility:*

*This development requires (2) 8 cubic yard container with three times per week servicing.*

*Table 1: Specifications for Onsite Solid Waste Enclosures*

<i>Container size (yd3)</i>	<i>Width (ft)</i>	<i>Depth (ft)</i>	<i>Height (ft)</i>	<i>Slab Thickness (ft)</i>	<i>Requirements</i>
8	10	10	5.5	0.5	<i>Water (hose bib), drain, Effluent Disposal well; guard rails</i>

*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](mailto: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.

**National Roads Authority**

As per your email dated May 11th, 2023, the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.

*General Issues*

Entrance and exit curves shall be no less than fifteen (15) feet in radius. Please have the applicant adjust the site plan so that both entrance/exit curves on 5C234 (Auxiliary Parking) and the two entrance/exit curves between the entrance and exit only of 5D4.

*Road Capacity Issues*

The traffic demand to be generated by a residential development of thirty-eight (38) dwelling units has been assessed in accordance with ITE Code 220 – Apartments. Thus, the assumed average trip rates per dwelling unit provided by the ITE for estimating the daily, AM and PM peak hour trips are 6.65, 0.51 and 0.62 respectively. The anticipated traffic to be added to West Bay Road is as follows:

Expected Daily Trips	AM Peak Hour Total Traffic	AM Peak 20% In	AM Peak 80% Out	PM Peak Hour Total Traffic	PM Peak 65% In	PM Peak 35% Out
253	19	4	15	24	16	8

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

*Access and Traffic Management Issues*

Entrances shall be between twenty-two (22) and twenty-four (24) feet wide.

A six (6) foot sidewalk shall be constructed on West Bay Road within the property boundary, to [NRA specifications](#).

One-way driveway aisles with diagonal parking shall be between twelve (12) to sixteen (16) feet wide. Two-way driveway aisles shall be a minimum of twenty-two (22) feet wide.

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

### *Stormwater Management Issues*

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

- *The applicant shall demonstrate, prior to the issuance of any Building Permits, that the Stormwater Management system is designed to embrace storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and ensure that surrounding properties and/or nearby roads are not subject to stormwater runoff from the subject site.*
- *The stormwater management plan shall include spot levels (existing and finished levels) with details of the overall runoff scheme. Please have the applicant provide this information prior to the issuance of a building permit.*
- *Construct a gentle 'hump' at the entrance/exit (along the entire width of each driveway) in order to prevent stormwater runoff from and onto West Bay 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 details need to be provided as per NRA specifications.*

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

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

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

## Department of Environment

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).

Given the type of development (i.e. a 10-storey residential development) and the scale and location of the proposal, the project was screened for an Environmental Impact Assessment (EIA) as outlined in Schedule 1 of the National Conservation Council's Directive for EIAs issued under section 3(12)(j) and which has effect under Section 43(2)(c) of the National Conservation Act, 2013. The Screening Opinion was considered and endorsed by the National Conservation Council at their meeting on 23 August 2023 and is provided in Appendix 1 of this review. It was determined that whilst there are environmental impacts associated with this project, as detailed below and in the EIA Screening Opinion, the project does not require an EIA to be conducted in order to understand the environmental effects.



Figure 1: Site context showing location of the site in relation to critical sea turtle nesting habitat and the offshore Marine Protected Area (Aerial Imagery Source: UKHO, 2021).

The beach at the site has been designated as **critical turtle nesting habitat** in the National Conservation Council's Interim Directive for the designation of Critical Habitat of Green

turtles (*Chelonia mydas*), Loggerhead turtles (*Caretta caretta*), Hawksbill turtles (*Eretmochelys imbricata*), Leatherback turtles (*Dermochelys coriacea*) and all other species that may occur in Cayman waters including Kemp's Ridley turtles (*Lepidochelys kempii*) (issued under Section 17 (7) of the National Conservation Act (2013)).

As per Sections 41 (4) and (5) of the National Conservation Act (NCA), this designation of critical habitat means that adverse impacts to the habitat either have to be avoided or be able to be mitigated with the imposition of conditions of approval. It also means that the National Conservation Council is able to direct the inclusion of those conditions in any planning permission that may be given.

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

- Construction on the beach directly or indirectly impacting mature and hatchling sea turtles,
- Development on the beach directly removing nesting areas from the critical habitat and indirectly impacting the critical habitat through modification and degradation of the natural beach,
- Artificial lighting causing mature females to be deterred from nesting and hatchling turtles to crawl away from the sea, where they die from dehydration, exhaustion, predators or vehicles, and
- Loss of coastal vegetation.

### **Construction Impacts**

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

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

Nesting sea turtles often use vegetation as a cue for nesting, and will crawl landwards up the beach until they reach the vegetation, or on a modified beach, a hard structure. When the vegetation is removed for construction, sea turtles can enter construction sites and be harmed. Figures 2 and 3 below show sea turtle tracks directly up to construction sites. The DoE has also been called to respond numerous times to sea turtles who have become trapped in construction sites. Figure 6 shows a sea turtle hatchling which was killed due to heavy equipment being operated on the beach.





*Figures 2 & 3: Sea turtle tracks showing that the sea turtle has crawled up the beach until it reached a construction site (Source: DoE and Tammy Kelderman, 2021). The fence in Figure 2 is dangerous to sea turtles as it is sharp, rusty and not secure.*



*Figures 4 & 5: DoE photos showing turtle tracks within a construction site on a turtle nesting beach. This site did not have temporary beachside construction fencing to prevent turtles from entering the site. The turtle could have or may have been injured by construction materials and debris on-site (Source: DoE, 2023).*

*Figure 6: A dead sea turtle hatchling, which was killed by heavy equipment operating*



*on the beach (Source: DoE, 2022).*

*For these reasons, construction fencing suitable for excluding turtles must be installed prior to the commencement of demolition and/or site works. Mesh fencing, Heras fencing, and chainlink fencing are all **unacceptable** as they can be dangerous to turtles and do not exclude them from the site. Mature green sea turtles weigh around 300 to 400 lbs and are capable and strong diggers.*

*Temporary beachside construction fencing must be:*

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

- *Suitable to contain all excavated material, construction materials and demolition waste landward of the fencing.*



*Figure 7: An example of suitable construction fencing to protect turtles (Source: DoE, 2022).*

### **Development Setbacks**

*Given the climate change predictions for the region, including sea level rise and increased intensity of storm events (including storm surge), the DoE is pleased to see that the proposed redevelopment includes a relocation of the pool landward such that it no longer extends seaward of the natural vegetation line. It is important to highlight that minimum setbacks seek to provide protection to properties against these inevitable effects of climate change such as coastal flooding and erosion by ensuring that hard structures are not located in an area susceptible to these hazards.*

*The width of critical habitat is the sea turtle nesting habitat from the low water mark to the vegetation line (defined as the line of woody/permanent vegetation or the closest impermeable structure). The removal of the existing pool from this critical habitat would increase the area*

available for sea turtle nesting provided the void left by the removal of the pool is filled with beach quality sand.

### **Artificial Lighting**

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

Turtle friendly lighting has been a legal requirement in ordinances in the United States for over 30 years. It is a proven solution to prevent the misorientation of sea turtles whilst safely and effectively lighting beachside properties. The Department strongly recommends the use of turtle friendly lighting on turtle nesting beaches. Figures 8-10 show examples of properties in Grand Cayman that have turtle friendly lighting installed.



Figures 8-10: Properties retrofitted to turtle friendly lighting along Seven Mile Beach, Grand Cayman (Source: DoE, various).

Due to the scale of the proposed development, and the density of turtle nesting in the area (refer to Figure 11), ill-considered artificial lighting will significantly disrupt turtle nesting activities in the vicinity.

The proposed building has a high proportion of glazed area, meaning that interior lights are also likely to have negative impacts on sea turtle nesting. Due to the height of the building and amount of glazing, extensive window treatments or specialty glazing are likely to be required in order to mitigate this.

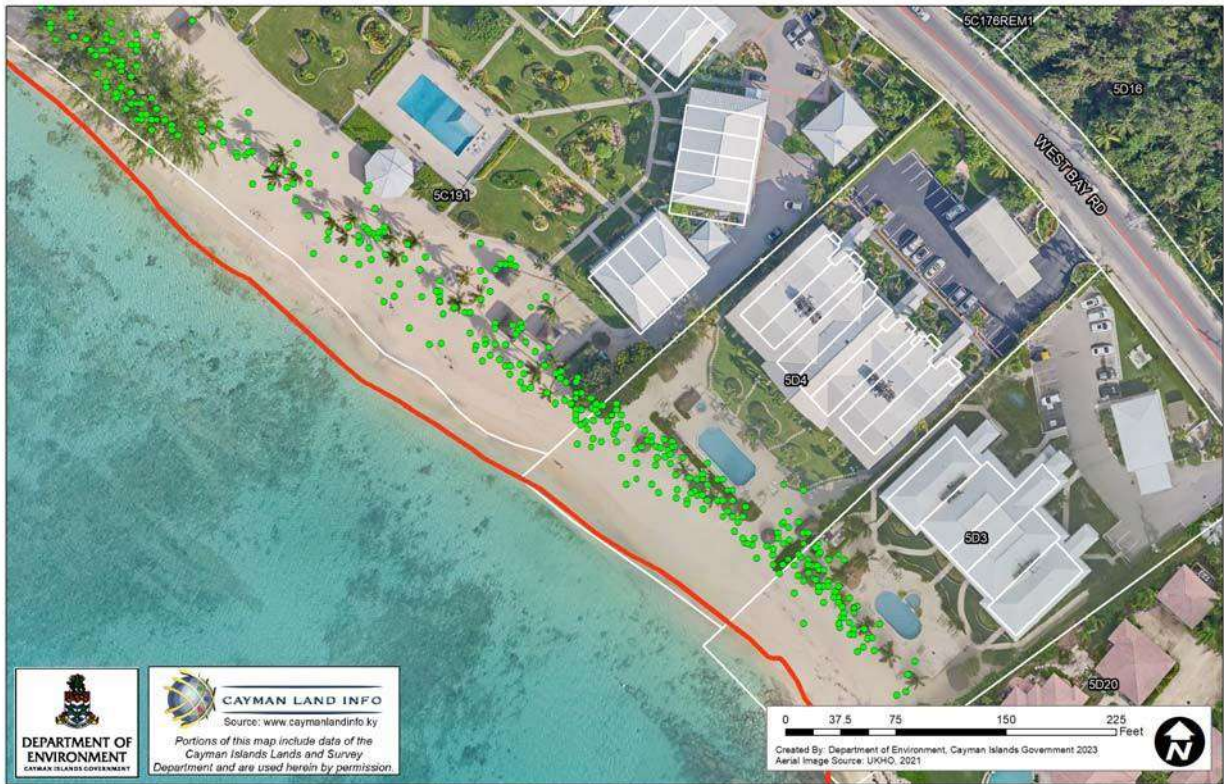


Figure 11: Each dot represents a recorded sea turtle nest (Source: DoE Turtle Nest Monitoring Project Data, 2022 ).

### Importance of Coastal Vegetation

Coastal habitat incorporates a variety of salt and wind-tolerant flora. Native coastal vegetation is becoming rarer as development on the coast increases. Coastal shrubland is high in ecological value, providing a biodiverse habitat for native wildlife in addition to stabilising the shoreline and reducing erosion. Once vegetation has been cleared, it often results in wind-borne erosion of the land and general coastal erosion. Coastal vegetation is therefore important for the integrity of the beach to ensure there is an appropriate nesting habitat for sea turtles in this proposed critical location. Beach vegetation is also thought to play an important role in sea turtle nest site selection, hatch success, hatchling fitness, sex ratio, and sea finding.

We strongly urge the applicant to retain as much mature native vegetation as possible, particularly along the coastal frontage of the site. We also encourage the applicant to plant and incorporate native species in their landscaping scheme. This, along with the relocation of the existing pool landward has the potential to provide a positive benefit to the sea turtle nesting critical habitat.

### **Daylight, Sunlight, Overshadowing, Overlooking and Cumulative Effects**

*The proposed development features a 10-storey building. As the neighbouring properties are low-rise developments in fairly close proximity, there is expected to be significant overlooking by the Proposed Development. It is highly likely that the construction of the proposed development will lead to overshadowing and blocking of daylight / sunlight from the southernmost units at Silver Sands, and from a significant portion of The Palms. As such, we recommend that the CPA give due holistic consideration to visual impact and the impacts of daylight, sunlight and overshadowing, both at a development-specific scale and more generally as part of development planning for the islands.*

*The proposed redevelopment is another in a string of similar redevelopment projects along Seven Mile Beach. It is highly likely that other existing low-rise condominiums will also seek to redevelop into 10 storey buildings and this is changing the nature of Seven Mile Beach. The cumulative redevelopment of properties to higher, more densely populated buildings will introduce more people onto the beach and a cumulative increase in population density is likely to exacerbate traffic issues for the area. As discussed above, the proposed development will also be visually prominent. With cumulative development, this will change the view of Seven Mile Beach from low-rise to high-rise.*

### **Renewable Energy**

*The DoE recommends that, wherever possible, sustainable design and energy efficiency features are included in projects such as this one. We especially encourage renewable energy installations given that the Cayman Islands has a target of 70% of energy generation being renewably sourced by the year 2037 (Cayman Islands National Energy Policy 2017-2037). We do note that there has been some inclusion of renewable energy on the roof space. We also strongly recommend that photovoltaic solar panels are installed over the parking spaces on 5C/234. Not only does this provide renewable energy to serve the development, but it also provides shade and cover for the cars beneath.*

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

*The site is designated as the critical habitat of a protected species under the NCA. This beach has a very high density of turtle nesting over the last 20 years, as evidenced by the DoE's nest monitoring program.*

*Without appropriate controls, there would or would likely be an adverse effect on the designated sea turtle critical habitat, namely:*

- *Section 2(a) of the NCA: alterations that may impair the capacity of the area to function as a habitat beneficial to wildlife, and*

- *Section 2(j) alterations that may hinder or impede the movement or migration of wildlife.*

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

*In order to provide the Authority with an indication of the DoE's section 41(5) response on behalf of the NCC, a draft of the Directed Conditions which will be required to form part of the approval for this project are appended. Should the CPA wish to propose other conditions as a means of mitigating the adverse impacts identified, please provide those conditions at the time of application for the DoE's review and approval. Once the DoE has received the CPA's application under Section 41(4) we will supply our Section 41(5) response in line with Appendix 1 within one week.*

### **Appendix 1 – Draft Conditions**

*The following contains an indication of the DoE's section 41(5) response on behalf of the NCC and a draft of the Directed Conditions which will be required to form part of the approval for this project following application under section 41(4) of the NCA.*

#### **Draft Directed Conditions**

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

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

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

2. *Prior to the issuance of a Building Permit, the applicant shall prepare and submit a plan for review and approval to the Department of Environment for turtle friendly lighting, which minimises the impacts on sea turtles. Guidance on developing a lighting plan can be found in the Department of Environment's Turtle Friendly Lighting: Technical Advice Note (September 2018) available from <https://doe.ky/marine/turtles/tfl/>. The DoE's written approval must be received by the Planning Department prior to the issuance of the Building Permit.*
3. *Prior to the installation of the beachside construction fencing and the commencement of construction works, the property owner shall contact the Department of Environment to check for the presence of turtle nests and to ensure that no nests will be impacted by the installation of the embedded fencing or the commencement of construction works. The Department of Environment's written approval must be received by the Planning Department prior to the issuance of the Building Permit.*



4. *Prior to the issuance of a Building Permit, beachside construction fencing associated with the works shall be installed and be positioned 75 from the Mean High Water Mark. The fencing shall be erected so that it fully encloses the beach-facing area of works and is embedded at least 2 feet into the beach profile to prevent turtles from entering the construction site or digging under the fencing. The applicant shall liaise directly with the Department of Environment for requirements guidance regarding this fencing. The Department of Environment will inspect the fencing and confirmation of the Department of Environment's written approval must be received by the Planning Department prior to the issuance of the Building Permit.*

***During Construction***

5. *All construction materials including excavated materials and/or debris shall be stockpiled on the landward side of the construction fencing.*
6. *The void remaining following demolition and removal of the existing pool shall be filled with site-derived beach quality sand.*
7. *Any sand that is to be excavated during construction shall be retained on-site and beach-quality sand shall be placed along the active beach profile. Placement of the sand on the beach during turtle nesting season will require the written consent of the Department of Environment, to ensure that no nests will be impacted. If there is an excessive quantity of sand that cannot be accommodated on-site, and the applicant would like to move such sand offsite, it shall be the subject of a separate consultation with the National Conservation Council.*

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

*Section 42 (1) and (2)(a) of the NCA states:*

*42 (1) "At the time that the Council agrees to a proposed action subject to conditions imposed pursuant to section 41(5)(a), it may, in its discretion, direct that a schedule of inspections be carried out by or on behalf of the Director to ensure compliance with the conditions.*

*42 (2) Where a schedule of inspections has been required by the Council under subsection (1)-*

*(a) the Central Planning Authority or the Development Control Board shall not issue a certificate of completion pursuant to the Development and Planning Law (2011 Revision) in respect of the proposed action until the Council has certified that the conditions imposed pursuant to section 41(5)(a) have been complied with;"*

*Therefore, in addition, in the exercise of powers which have been conferred through express delegation by the National Conservation Council, pursuant to section 3(13) of the NCA, the Director of DoE **respectfully directs** that the following condition be imposed under Section 42:*

8. *Lighting and/or specifications for visible light transmittance shall be installed and maintained in accordance with the turtle friendly lighting plan which has been reviewed*

*and approved by the Department of Environment. Once construction is complete, prior to the issuance of the Certificate of Occupancy, the Department of Environment will inspect the installed lighting for compliance with the approved turtle friendly lighting plan. Confirmation of the Department of Environment's written approval of the installed exterior lighting after the inspection must be received by the Planning Department prior to the issuance of the Certificate of Occupancy.*

*These conditions are directed to prevent the 'take' of sea turtles (Part 1 Schedule 1 species of the National Conservation Act) and adverse impacts on the critical habitat of sea turtles, which is defined in the Interim Directive for the designation of Critical Habitat of Green turtles (*Chelonia mydas*), Loggerhead turtles (*Caretta caretta*), Hawksbill turtles (*Eretmochelys imbricata*), Leatherback turtles (*Dermochelys coriacea*) and all other species that may occur in Cayman waters including Kemp's Ridley turtles (*Lepidochelys kempii*) (issued under Section 17 (7) of the National Conservation Act (2013)).*

*A person aggrieved by a decision of the National Conservation Council to impose a condition of approval may, within 21 days of the date on which the decision is received Planning Authority/Department of Planning, appeal against the decision of the Council to the Cabinet by serving on the Cabinet notice in writing of the intention to appeal and the grounds of the appeal (Section 39 of the National Conservation Act, 2013). We trust that this information will be relayed to the applicant in the Department of Planning's decision letter.*



**4 September 2023**

**Notice of National Conservation Council Decision Ref: Aqua Bay EIA**

- 1) *The proposed action is a decision by the CPA on the application for planning permission for the Aqua Bay redevelopment.*
- 2) *The proposed development is a large scale tourism development located on a turtle nesting beach, designated Critical Habitat and so falls within Schedule 1 (those proposed activities which need to be screened to determine if an Environmental Impact Assessment is required) of the National Conservation Council's Directive for Environmental Impact Assessments (EIAs) issued under section 3(12) (j) and which has effect under section 43(2) (c) of the National Conservation Act.*
- 3) *The proposed development was considered by the National Conservation Council at its General Meeting on 23 August 2023.*
- 4) *Council noted a variety of factors, including but not limited to*
  - a. *The Department of Environment screening opinion and the representative project plans.*
  - b. *The Department of Environment presentation on the project.*
  - c. *The environmental mitigation measures proposed by the applicant.*
- 5) *Under section 41(3) of the National Conservation Act, 2013, the views of the Council shall be taken into account by the Central Planning Authority when making their decision on the proposed action.*
- 6) *The National Conservation Council decided that,*
  - a. *an EIA is not needed, but that mitigation measures with respect to turtles are secured by conditions; and*
  - b. *the proponent should be encouraged to use their parking lot across the street for additional solar power,*

*if the development is approved by the Central Planning Authority.*
- 7) *It should be communicated to the Central Planning Authority, and by the Authority through their usual and sufficient means of communication to the appropriate parties, that the Central Planning Authority and a person aggrieved by a decision of the National Conservation Council may, within 21 days of the date on which the decision of the Council is received by them, appeal against the Council decision 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).*



*John Bothwell*

***John Bothwell*** – *Manager, Legislation Implementation & Coordination Unit Secretary,*  
*National Conservation Council*

***Email:*** [John.Bothwell@gov.ky](mailto:John.Bothwell@gov.ky) ; [Conservation@gov.ky](mailto:Conservation@gov.ky)

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DEPARTMENT OF  
ENVIRONMENT  
CAYMAN ISLANDS GOVERNMENT

**Screening Opinion for the Proposed Redevelopment of Aqua  
Bay 29 May 2023**

*Executive Summary*

*The National Conservation Council's (NCC) Directive for Environmental Impact Assessments (EIAs) notes that all activities listed in Schedule 1 will be considered against the screening criteria outlined in the Directive to determine whether an EIA may be required.*

*The proposed development includes a 10 storey apartment building with 38 units (159,975 sq ft) with below ground parking, a pool, a generator, and ancillary parking across the street. The site is located at Block 5D Parcel 4, to the west of West Bay Road at the existing site of the Aqua Bay Club Condominiums with the ancillary parking to be located at Block 5C Parcel 234, to the east of West Bay Road. The site is located on a turtle nesting beach, designated Critical Habitat under the Interim Directive for the designation of Critical Habitat of Green turtles (*Chelonia mydas*), Loggerhead turtles (*Caretta caretta*), Hawksbill turtles (*Eretmochelys imbricatea*), Leatherback turtles (*Dermochelys coriacea*) and all other species that may occur in Cayman waters including Kemp's Ridley turtles (*Lepidochelys kempii*) and hybrids (2020).*

*The applicant has included a number of mitigation measures into the proposed redevelopment including an increased setback when compared to the existing development from the MHWL for the hard structures and a ground floor elevation of 16 feet above mean sea level, as well as areas set aside for renewable energy.*

*The planning application was considered against the screening criteria outlined in the EIA Directive. There would be beneficial effects with respect to ecology if the recommended conditions were included and implemented, including a turtle friendly lighting condition. In the absence of these conditions, there would be severe adverse effects on sea turtles by directly and indirectly increasing their mortality. There may be minor adverse impacts with respect to noise during construction and with cumulative development at Seven Mile Beach. These effects should be considered by the Central Planning Authority. There may also be adverse effects to visual impact, daylight, sunlight and overshadowing that should be considered further due to the prominence of the building on the beach and we have recommended additional studies to assess these effects.*

*The Department of Environment is of the opinion that the proposed development does not require an EIA as there are no likely significant adverse effects provided that mitigation measures with respect to turtles are secured by condition and implemented conditions.*

### *Introduction*

*The process for determining whether an Environmental Impact Assessment (EIA) is needed is a statutory process that is governed by the National Conservation Act (NCA). This first stage, where the relevant authorities decide if a development is an EIA development (i.e. requires an EIA) is called screening.*

*The National Conservation Council's (NCC) Directive for Environmental Impact Assessments (EIAs) issued under section 3(12) (j) and which has effect under section 43(2) (c) of the NCL, notes that all activities listed in Schedule 1 will be considered against the screening criteria outlined in sections 2 to 3 of Schedule 1 of the Directive to determine whether an EIA may be required. The proposed development falls within Schedule 1, i.e. large-scale residential development adjacent to a Marine Protected Area.*

*The screening criteria include:*

*The type and characteristics of a development;*

*The location of a development; and*

*The characteristics of the potential impact.*

*These screening criteria have been considered with respect to the proposed development in order to determine whether an EIA is required.*

### *The Site*

*The main development site is located at Block 5D Parcel 4, to the west of West Bay Road at the existing site of the Aqua Bay Club Condominiums. The Planning Permission Drawing set also indicates that ancillary parking is to be provided to the east of West Bay Road at Block 5C Parcel 234. The site location is shown on Figure 1. Block 5D Parcel 4 has an area of 1.38 acres and is located on Seven Mile Beach. The site is located on a sea turtle nesting beach, and is designated Critical Habitat under the Interim Directive for the designation of Critical Habitat of Green turtles (*Chelonia mydas*), Loggerhead turtles (*Caretta caretta*), Hawksbill turtles (*Eretmochelys imbricate*), Leatherback turtles (*Dermochelys coriacea*) and all other species that may occur in Cayman waters including Kemp's Ridley turtles (*Lepidochelys kempii*) and hybrids (2020). Based on the Department of Environment (DoE)'s 20 years of monitoring sea turtle populations, the site has had a large number of nests, primarily of Green sea turtles (*Chelonia mydas*). Block 5C 234 has an area of 0.26 acres and is located landward of West Bay Rd.*

The existing development is not considered to be an architectural heritage asset and currently forms a low-rise residential complex with one pool. The closest hard structure to the Mean High Water Mark (MHWM) is the pool, at a distance of approximately 80 feet. The existing building is set back further from the MHWM at approximately 150 feet.

The existing landscaping, with the exception of the pool, appears to be set back at the approximate natural vegetation line (approximately 100 to 130 feet from the Mean High Water Mark).

The existing buildings on site, and the pool are to be completely demolished to make way for the proposed development.

The site is adjacent to a Marine Protected Area – the West Bay Bight No-Diving and Line Fishing Only Zone and the West Bay Bight Marine Reserve.



Figure 1. Site Location and Environmental Context Plan (Aerial Imagery Source: UKHO, 2021)

### **Proposed Development**

#### **Description of the Proposed Development**

The proposed development comprises a single 10 storey apartment building with 38 units (159,975 sq ft) with a fitness centre, pool and below ground parking providing a total of 45 parking spaces. In addition to the below ground parking, a secondary lot providing ancillary

*parking with an additional 18 parking spaces is proposed across West Bay Rd. This provides a combined total of 63 parking spaces. A generator, transformer and garbage enclosure are also located on this secondary lot. The roof of the building is to feature a rooftop deck with barbecue areas and (4) infinity pools with spas. A portion of the roof has been set aside for photovoltaic panels and solar hot water collectors.*

### ***Planning History***

*The site originally consisted of a single residential property, and was redeveloped as the Aqua Bay Club Condominiums in the 1980s. The existing property features a total of 21 units.*

*The strata were originally contacted by the DoE regarding the Turtle Friendly Lighting Retrofit Program, at which point it was indicated that they planned to redevelop the site to feature a 10 storey residential building. As such, the existing property does not feature Turtle Friendly Lighting.*

### ***Characteristics of Potential Impact***

*The baseline conditions, the potential impact of the proposed development and any likely significant effects have been qualitatively assessed for each of the below environmental aspects. Having due regard to air quality, architectural and archaeological heritage, flood risk and water quality, ground conditions, socio-economics, there are not considered to be adverse environmental impacts in these areas and therefore they are not discussed further.*

### ***Ecology***

*The site is located on a sea turtle nesting beach which was designated Critical Habitat under the Interim Directive for the designation of Critical Habitat of Green turtles (*Chelonia mydas*), Loggerhead turtles (*Caretta caretta*), Hawksbill turtles (*Eretmochelys imbricata*), Leatherback turtles (*Dermochelys coriacea*) and all other species that may occur in Cayman waters including Kemp's Ridley turtles (*Lepidochelys kempii*) and hybrids (2020). Due to the height and massing of the structure, if mitigating measures are not considered, the proposed development has a high likelihood of impacting the turtle nesting beach. Bright lights on the beach can deter female turtles from nesting and cause baby turtles to misorient and crawl away from the sea, where they often die from dehydration, exhaustion, predators or vehicle impacts. It is important that any lighting that may directly, indirectly, or cumulatively illuminate the nesting beach be turtle friendly.*

*In addition to the above, the ocean facing façade of the building features a very high proportion of glazed area. As with exterior lights, artificial lights from within buildings can also have negative impacts on sea turtle nesting. Due to the height of the building and the amount of glazing, extensive window treatments or specialty glass may be required in order to mitigate this.*



*The Applicant has not requested any variances to the setbacks in the Development and Planning Regulations, and appears to have positioned the proposed development behind the natural vegetation line, significantly further landward than the original structure. All hard structures are located at least 130 feet from the Mean High Water Mark, and the 10 storey structure is set back 190 feet from the Mean High Water Mark. This meets the increased setbacks required for structures exceeding 3 storeys in a Hotel/Tourism zone under the Development and Planning Regulations.*

*The relocation of the property landward during the redevelopment is likely to have a moderate beneficial effect on ecology as the development will no longer extend seaward of the natural vegetation line, and there is the potential to increase the total area of habitat available for sea turtles depending on the mitigation measures put in place for turtles.*

*Overall, the proposed development has the potential to have a moderate beneficial effect on ecology through the installation of Turtle Friendly Lighting and a more sensitively-placed development which does not extend seaward of the natural vegetation line, **but only if the following mitigation measures are secured by conditions on the applicant's planning permission and adequately implemented.** The beneficial effect is contingent upon the following conditions:*

- *The applicant shall prepare and submit a plan to the DoE for turtle friendly lighting (inclusive of window tinting and details of window treatments), which minimises the impacts on sea turtles. All lighting shall be installed in accordance with the plan, to be approved by the DoE. Guidance on developing a lighting plan can be found in the DoE's Turtle Friendly Lighting: Technical Advice Note (September 2018). The environmental factors, demography and economy<sup>1</sup>. At the time of writing, the Cayman Islands Climate Change Policy is in draft form and at public consultation stage.*

*The proposed development is likely to both contribute to climate change and be affected by climate change. The proposed development is likely to contribute to climate change during construction and operation. There will be vehicle movements and resource consumption associated with construction and operation.*

*However, embedded mitigation measures have been proposed including increasing the setback from the existing development to meet the minimum setbacks under the Development and Planning Regulations, and a first floor slab at 16 feet above Mean Sea Level.*

*The effects of climate change on the proposed development are most likely to be related to storm events and sea level rise. The Cayman Islands will likely experience a sea level rise and more intense but fewer rain events, which could affect the proposed development<sup>2</sup>. The proposed development is setback from the Mean High Water Mark by 130 ft, however the risk of effects from climate change still remain. A small amount of solar energy is proposed for the proposed development. This includes a portion of the roof set aside for photovoltaic panels and solar hot water collectors for the pool and spa. The incorporation of renewable energy will help to provide climate change resilience and mitigation.*

*The proposed development does feature below ground parking. Although set back 190 feet from the MHW, the finished floor level of the below ground parking is only 5 foot 3 inches*

above Mean Sea Level. This leaves this area susceptible to flooding during future storm events. The proposed development also features a significant amount of floor to ceiling glazing. This will increase the cooling demand and therefore the energy and resource consumption of the development once operational. In addition to this, the site features a relatively large proportion of paved area meaning that drainage is likely to be a consideration. In light of the above, the proposed development could have been more sensitively designed with respect to the climate.

There are not considered to be likely significant effects with respect to climate change.

### **Visual Impact; Daylight, Sunlight and Overshadowing**

The proposed development features side setbacks of 20 feet from neighbouring properties. This meets the minimum required setback under the Development and Planning Regulations, however it should be considered that the proposed redevelopment consists of 10 storeys which is in stark contrast to the low rise buildings in the immediate vicinity. The neighbouring property to the north (Silver Sands, Block 5C Parcel 191) and to the south (The Palms, Block 5D Parcel 3) are both low rise residential properties and the proposed development will have a visual impact on these properties given the relative height differences.

It is highly likely that the construction of the proposed development will lead to overshadowing and blocking of daylight / sunlight from the southernmost units at Silver Sands, and from a significant portion of The Palms.

Although an EIA is not believed to be required in order to assess these effects, the DoE strongly recommends that the CPA give due holistic consideration to visual impact and the impacts of daylight, sunlight and

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1 National Climate Change Committee. (2011). *Achieving a Low Carbon Climate-Resilient Economy: Cayman Islands' Climate Change Policy (draft)*.

2 Climate Studies Group. (2014). *Climate Profile for the Cayman Islands. The University of the West Indies for Smith Warner International Ltd.*

overshadowing both at a development-specific scale and more generally as part of development planning for the islands. For this development, we recommend the following:

*A high-level assessment of visual impact on the receptors from the Silver Sands and The Palms; and An assessment of daylight, sunlight and overshadowing for the two neighbouring properties.*

### ***Cumulative Effects***

*The proposed redevelopment is another in a string of similar redevelopment projects along Seven Mile Beach. There are likely to be other older low-rise condominiums who may also seek to redevelop into 10 storey buildings and this is changing the nature of Seven Mile Beach. The cumulative redevelopment of properties to higher, denser buildings will introduce more people onto the beach and a cumulative increase in population density is likely to exacerbate traffic issues for the area. The proposed development will be visually prominent and with future cumulative development, there will also be visual amenity effects, as the view of Seven Mile Beach from the beach, from the water and from West Bay Road will change from low-rise to high-rise. This should be considered as part of the Seven Mile Beach Tourism Corridor Area Plan, though the DoE is not aware of the current status of that Area Plan.*

### ***Conclusions***

*The proposed development does not require an EIA as there are no adverse significant effects considered likely provided that mitigation measures with respect to turtles are secured by Planning conditions and implemented. Visual impact and daylight, sunlight and overshadowing should be considered further by the CPA. The proposed development has included embedded mitigation to reduce the environmental impact of the development. The proposed development has included some climate change resilience features, including a small amount of renewable energy. There are minor effects from noise and vibration, particularly during construction, and likely more significant cultural and social effects from the potential cumulative effects from development that should be considered and addressed by the CPA.*

*Given the increased setbacks over the existing development, there are likely to be beneficial effects on ecology*

***provided the following Planning conditions are secured and adequately implemented:***

- The applicant shall prepare and submit a plan to the Department of Environment for turtle friendly lighting, which minimises the impacts on sea turtles. All lighting shall be installed in accordance with the plan, to be approved by the DoE. Guidance on developing a lighting plan can be found in the DoE's Turtle Friendly Lighting: Technical Advice Note (September 2018).*
- 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.*
- 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.*
- Construction materials shall be sited as far back from the beach as possible to maximise nesting habitat and any materials on the beach during turtle nesting season (May to November) shall be fully enclosed in fencing embedded at least 2 feet into the sand.*

- Any sand excavated as part of the construction works shall remain on site and be returned to this beach system. If the volume of sand is deemed too great to retain all sand on site, any removal from site should be the subject of a separate consultation with the Council.

*In the absence of these conditions, the proposed development would severely adversely impact sea turtles (a protected species under the NCA) through directly and indirectly increasing their mortality.*

*We also strongly recommend:*

- *A high-level assessment of visual impact on the receptors in the units of both the Silver Sands and The Palms*
- *An assessment of daylight/sunlight/overshadowing for the neighbouring properties.*

***After considering the Screening Opinion detailed above, the NCC is required to issue its decision to the originating entity on the requirement for an EIA, pursuant to Section 43 (1).***

### **APPLICANT'S LETTER**

*Over thirty-five years ago, I received approval to construct 21 condominium apartments on the above Seven Mile Beach property Mr. Jimmy Powell of Cayman Contractors and myself completed the project and I continue to develop responsible, successful projects along the beach to **this day**.*

*In 2019, I was approached by the current owners of Aqua Bay Club, many of whom were original owners, to investigate rebuilding Aqua Bay Club. The owners, like many on Seven Mile Beach, were at a crossroads whereby the costs of constant repairs, evidence of concrete spalling, dated building design and lack of amenities to attract tourists motivated and to look to other options.*

*Our financial modeling at the time concluded that with adding an additional 17 apartments a rebuild and replacement was viable. At this point we commenced with detailed site investigation and architectural drawings.*

*Today we have applied to construct 38 condominium apartments (the original 21 plus 17 additional). We have carefully observed regulations for beachfront, side-yard and road setbacks and building height. The existing swimming pool will be removed to create a far greater sand foreshore and thereby increase turtle nesting habitat. The project name will be changed to just Aqua Bay.*

*Additional land across the road will be utilized for parking per regulations and will remove the unsightly aspect of garbage containers on the beachfront site.*

*In our redevelopment modeling studies of properties along Seven Mile Beach. it has become apparent that although the Development and Planning Regulations now allow for ten storey buildings, in nearly all cases the existing regulation related to density is imbalanced and prohibits the financial viability of redevelopment. A look back in history on this aspect shows that for decades the three storey limit allowed a density of 20 apartments per acre, the heights*

were then raised to seven storeys and density was increased to 25 apartments per acre, the heights were then raised to ten storeys but the density was not changed. The reasoning for this is unclear.

We respectfully ask for a variation in density from the current allowed by way of site size being 34.5 Apartments to 38 apartments for the following reasons:

1. The characteristics of the proposed development are consistent la the character of the surrounding area.
2. The proposal will not be materially detrimental to persons residing or working in the vicinity, to the adjacent properties, to the neighborhood, or to the public welfare
3. This variance does not impact set backs or building height regulations.

An additional factor, as shown in our application plans, is that the parcel of land across West Bay Rd, owned by Aqua Bay Club, is included in our application. That parcel is .2559 of an acre.

Adding that land area to the land area on the beach side does support the current density regulation of 25 apartments per acre although since it is not contiguous a variation is needed.

We believe therefore that our request for a variation is reasonable.

Our reputation for building quality developments on Seven Mile Beach speaks for itself and if approved, this project would both create development revenue in excess of \$10 million for the government and excellent employment opportunities for our community. Additionally, refreshing our tourism accommodation product will create increased tourism tax recurrent revenue along with sustainable employment.

## **OBJECTION LETTERS**

The 45 objection letters have been provided as Appendix A.

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The subject property is located on West Bay Road and is presently the site of apartments and a pool.

The proposal is to demolish the existing 21 apartments and pool and construct a 10 storey building with 38 units, including new pool, on Block 5D Parcel 4. There is also proposed to be parking for 63 vehicles.

It is noted that there would also be development proposed on Block 5C Parcel 234 which is located across West Bay Road; specifically parking for 18 vehicles, two solid waste bins, a generator, and a transformer.

## **Zoning**

Both properties are zoned Hotel/Tourism.

## **Specific Issues**

### **1) National Conservation Act (NCA)**

Section 41(3) of the NCA states:

*Every entity shall, in accordance with any guidance notes issued by the Council, consult with the Council and take into account any views of the Council before taking any action including the grant of any permit or licence and the making of any decision or the giving of any undertaking or approval that would or would be likely to have an adverse effect on the environment generally or on any natural resource.*

Per a recent Court of Appeal ruling, the Authority must consider whether approval of the subject application for planning permission would or would likely have an adverse effect on the environment generally or on any natural resource. Should the Authority determine that there will be an adverse effect, then the National Conservation Council must be consulted for its views on the application per Section 41(3) of the NCA. Should the Authority determine there will be no adverse effect, then the Authority can proceed to consider the application.

### **2) Number of Apartments**

Regulation 10(1)(b) states that the maximum number of apartments or townhouses is 25 per acre.

The seaside portion of the development (5D 4) consists of 1.41 acres, which translates into a maximum 35 apartment units.

If the landside parcel (5C 234) is combined, if this is technically possible, then the number of apartments permitted increases to a maximum 41.

The proposal is for 38 apartments and the applicant has submitted a variance letter.

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

### **3) Height of building**

Regulation 8(2)(e)(i) states that in Hotel/Tourism zone 1, the maximum permitted height is one hundred and thirty feet or ten storeys, whichever is less.

Regulation 2 defines “height of building” as the vertical distance measured from the highest point on a proposed or existing building to the proposed finished grade directly below that point; and for the purposes of this definition, “finished grade” means the highest grade within five feet of the building and includes natural grade when no terrain alteration is proposed.

Regulation 2 also defines “storey” and this means that portion of a building included between the surface of any floor and the surface of the floor next above or if there be no floor above it, then the space between such floor and the ceiling next above it.

With respect to the proposed building, the proposed parking garage constitutes a storey and the result is an eleven-storey building that would not satisfy Regulation 8(2)(e)(i). The Authority has no discretion to allow more than 10 storeys. Further, it is noted that there are two levels of rooftop structures which have not been included as storeys per the exemptions listed in Regulation 8(4).

The Authority should discuss the height of the building, specifically the number of storeys proposed.

#### **4) HWM setbacks**

The pool and parking garage comply with the required 130’ setback from the high water mark. The remaining storeys all comply with the required 190’ setback from the high water mark.

#### **5) Off-site parking**

Regulation 8(1)(c) allows up to 50% of the required parking spaces in the H/T zone to be located not more than 500’ from the respective building. In this instance, 57 parking spaces are required and 63 spaces have been provided. Of those 63 spaces, 45 are on site in the parking garage and 18 spaces (or 31.5% of the total required) are located off-site on 5C 234.

### **SUPPLEMENTARY COMMENTS**

The applicant’s Attorney-at-law has provided a submission on behalf of the applicant. This submission is found at Appendix B.

The following comments were received from the National Conservation Council via the Director of Environment per the Authority consulting the Council under Section 41(3) of the National Conservation Act.

*We provided comments on this application on 8 September 2023, please see the previously uploaded review. It is unclear to us why the CPA has chosen to delay the application in this manner and to continue to not follow the Court of Appeal’s Judgement and the way forward that was agreed at a recent meeting between the CPA, NCC and the Departments of Planning and Environment. We apologise to the applicant on behalf of the government for this unnecessary delay.*

The following comments were received from the National Conservation Council via the Director of Environment per the Authority seeking approval from the Council under Section 41(4) of the National Conservation Act.

### ***Department of Environment – January 15, 2024***

*On 12 January 2024, the Department of Environment (DoE), under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013 (NCA)), received a request for approval under Section 41(4) of the NCA from the Planning Department/Central Planning Authority prior to the granting of planning permission for the aforementioned project.*

*Under Section 41(5) of the NCA, in the exercise of powers which have been conferred through express delegation by the National Conservation Council, pursuant to section 3(13) of the National Conservation Act (2013) the Director of DoE, therefore, respectfully directs that the following conditions be imposed by the Central Planning Authority or Department of Planning, as part of any agreed proposed action for planning approval:*

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

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

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

- *Prior to the issuance of a Building Permit, the applicant shall prepare and submit a plan for review and approval to the Department of Environment for turtle friendly lighting, which minimises the impacts on sea turtles. Guidance on developing a lighting plan can be found in the Department of Environment’s Turtle Friendly Lighting: Technical Advice Note (September 2018) available from <https://doe.ky/marine/turtles/tfl/>. The DoE’s written approval must be received by the Planning Department prior to the issuance of the Building Permit.*
- *Prior to the issuance of a Building Permit, beachside construction fencing associated with the works shall be installed and be positioned 75 from the Mean High Water Mark. The fencing shall be erected so that it fully encloses the beach-facing area of works and is embedded at least 2 feet into the beach profile to prevent turtles from entering the construction site or digging under the fencing. The applicant shall liaise directly with the Department of Environment for requirements guidance regarding this fencing. The Department of Environment will inspect the fencing and confirmation of the Department of Environment’s written approval must be received by the Planning Department prior to the issuance of the Building Permit.*
- *Prior to the installation of the beachside construction fencing and the commencement of construction works, the property owner shall contact the Department of Environment to check for the presence of turtle nests and to ensure that no nests will be impacted by the installation of the embedded fencing or the commencement of construction works. The Department of Environment’s written approval must be received by the Planning Department prior to the issuance of the Building Permit.*



### ***During Construction***

- *All construction materials including excavated materials and/or debris shall be stockpiled on the landward side of the construction fencing.*
- *The void remaining following demolition and removal of the existing pool shall be filled with site-derived beach quality sand.*
- *Any sand that is to be excavated during construction shall be retained on-site and beach-quality sand shall be placed along the active beach profile. Placement of the sand on the beach during turtle nesting season will require the written consent of the Department of Environment, to ensure that no nests will be impacted. If there is an excessive quantity of sand that cannot be accommodated on-site, and the applicant would like to move such sand offsite, it shall be the subject of a separate consultation with the National Conservation Council.*

*Section 42 (1) and (2)(a) of the NCA states:*

*42 (1) “At the time that the Council agrees to a proposed action subject to conditions imposed pursuant to section 41(5)(a), it may, in its discretion, direct that a schedule of inspections be carried out by or on behalf of the Director to ensure compliance with the conditions.*

*42 (2) Where a schedule of inspections has been required by the Council under subsection (1)-*

*(a) the Central Planning Authority or the Development Control Board shall not issue a certificate of completion pursuant to the Development and Planning Law (2011 Revision) in respect of the proposed action until the Council has certified that the conditions imposed pursuant to section 41(5)(a) have been complied with;”*

*Therefore, in addition, in the exercise of powers which have been conferred through express delegation by the National Conservation Council, pursuant to section 3(13) of the NCA, the Director of DoE respectfully directs that the following condition be imposed under Section 42:*

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

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

*These conditions are directed to prevent the ‘take’ of sea turtles (Part 1 Schedule 1 species of the National Conservation Act) and adverse impacts on the critical habitat of sea turtles, which is defined in the Interim Directive for the designation of Critical Habitat of Green turtles (Chelonia mydas), Loggerhead turtles (Caretta caretta), Hawksbill turtles (Eretmochelys imbricata), Leatherback turtles (Dermochelys coriacea) and all other species that may occur in Cayman waters including Kemp’s Ridley turtles (Lepidochelys kempii) (issued under Section 17 (7) of the National Conservation Act (2013)).*

*A person aggrieved by a decision of the National Conservation Council to impose a condition of approval may, within 21 days of the date on which the decision is received from the Central Planning Authority/Department of Planning, appeal against the decision of the Council to the Cabinet by serving on the Cabinet notice in writing of the intention to appeal and the grounds of the appeal (Section 39 of the National Conservation Act, 2013). We trust that this information will be relayed to the applicant in the Department of Planning’s decision letter.*

At 11:00am, Brian Butler appeared on behalf of the applicant he was accompanied by his Attorneys-at-law, J. Samuel Jackson and Selina Tibbetts. The following objectors signed the meeting attendance sheet:

Peter Phillips	Elizabeth Maiche	Paige Reupke
Ted Nesbit (for Joan Addison)	Luc Maiche	Helen Haddleton
Sean Dineer	Renate Mowery	Karen Shearer
Marie Adkins	George Wolff	Douglas Shearer
O. Oberteking	Maria Hauch	Diane Brazelton
Gale Lockbaum	Carl Hauch	Edelgard Beister
John Lockbaum	Megan Saillant	Scott Haugh
Danny Adkins	Meredith Saillant	Dan Linebarger
Mayra Artusi	Martha Saillan	
Dan Artusi	Henry Nichols	
Someone for Joan Addison	Richard Reupke	

Attorney-at-law, Kate McClymont was present and advised she represents 36 objectors.

Summary notes are provided as follows:

- KM noted there is a preliminary issue that she needs to raise:
  - She filed a submission, but it is not in the Agenda
  - It was provided by her learned friend at the last meeting
  - CPA hasn’t seen it
  - She needs the same natural justice as the applicant gets
  - She needs time to speak to her submission (see Appendix G)

- SJ noted that her submission is her speaking notes and there is no requirement for submissions to be published. He noted that he provided his submission two weeks in advance and it was also provided to KM. He noted that this seems like a delay tactic.
- CPA offered a solution that the application can be presented and that would give time for the members to read KM's submission.
- KM noted that she will need an hour.
- SJ noted that he is prepared today and adjusted his schedule around this date. He noted that KM said her notes were handed in before.
- KM stated they were emailed.
- SJ suggested there needs to be a more pragmatic approach to scheduling applications. He noted that KM said her notes were given to each member.
- KM advised that her speaking notes weren't accepted at the last meeting. She noted that a lot of objectors that she represents flew here today and she needs to know how many of them want the application adjourned.
- SJ noted that he strenuously objects to an adjournment.
- CPA noted they will be given an hour total, not an hour each.
- KM asked for 40 minutes.
- CPA noted that KM's speaking notes were not accepted at the last meeting as it was a late submission, furthermore, they were speaking notes. No further submission has been made by KM on this application.
- KM noted she would only agree with no adjournment if she has 30 minutes of speaking time.
- CPA asked the applicant to present the application.
- SJ provided several comments:
  - CPA previously sought consent from the National Conservation Council (NCC) per Section 41(4) of the National Conservation Act (NCA)
  - NCC provide their Section 41(5) conditions and the applicant is happy to have those conditions imposed
  - There is no need for further conversation regarding the NCA
  - Regarding the planning application, there is some confusion about building height
  - He read Regulation 8(2)(e)(i)
  - He then read Regulation 8(4) and emphasized the matter of non-habitable ancillary spaces which was introduced through an amendment to the Law in 2021
  - Height is measured in feet and storeys
  - Regulation 8(13) says the CPA can't vary the number of storeys, but 8(4) supplants that
  - Legally speaking this is a 10 storey building

- He proposed that the building has a below grade, non-habitable parking garage and some other elements on the roof which are also exempt from building height
- He then read a definition from the Building Code for habitable space
- For a long time, basements below grade either entirely or partially have not been considered a storey
- CPA asked SJ to repeat the Code reference
- He stated it is the 2012 IBC
- CPA corrected him as the Cayman Islands uses the 2009 International Building Code
- ST noted the definition is the same in both Codes, but yes, the correct Code is 2009
- SJ noted this is a garage, people are not sleeping in cars, it is non-habitable
- CPA noted SJ is trying to tie the Code to the Development and Planning Act (DPA) and his contention is that the definition in the Code should be used
- SJ replied absolutely and remarked that if the Code is not tied the DPA, then Building Control has been undertaking a lot of illegal activity for the past few decades
- SJ then provided additional comments:
  - Regarding density, if necessary they will apply for a minor variance, but they don't think they need it
  - The Regulations say 25 apartments per acre
  - Regulation 10(1)(b) does not say per parcel or where parcels are not contiguous or divided by a road
  - He believes there is precedent where sites are split
  - CPA can't focus on one parcel, there is no basis in law or logic to do that
  - There are only ancillary uses on the remote site although they are an integral part of the development
  - He believes that you must look at both parcels in total and then apply the density calculation
  - Not all of the development is on one parcel
  - CPA can ignore the road going through the middle
  - The Watermark and the Hyatt are examples
  - Some are hooked parcels, but that is a land registry exercise
  - The Mandarin and Prisma used land across the road for density
  - If CPA is not with them on this point then there is good reason to grant a variance
  - A justifiable reason is there is another site where the some of the development is located so this decreases the density across both sites
  - They are bound to comply with a condition because if they don't build on the remote site then they are in breach of planning control
  - There is no need for restrictive covenants
  - The objectors provided a misguided submission regarding the Development Plan

- This development is in keeping with the Development Plan, not at variance with it
- The project complies with the Hotel/Tourism provisions
- There is an objective in the Development Plan that CPA must review applications while looking at the interests of the financial sector and social impacts, the interests of the public and to promote the tourism industry
- Section 3.04 states that development needs to be designed so that the needs of the tourism industry are met
- Section 1.3 is a strategy to maintain and encourage the further development of the tourism industry
- Section 3.04 says apartments are permitted in the Hotel/Tourism zone
- He is at a loss why the objectors say apartments are not envisioned in the Hotel/Tourism zone
- Section 3.04 also states that the Plan should be applied in a way to prevent over development
- The proposed development meets these guiding strategies
- The existing development is much closer to the sea and the proposed application moves the building significantly further away from the sea
- Regarding the concept of managed retreat, this is in line with it
- By mounding up the site, this will help with climate residency
- The legislation clearly anticipated this type of development
- He is hearing that this development is not compatible with the area
- You can't just look at what is in situ, you have to plan forward and the CPA has the legislative framework from Parliament
- This development might be taller than the older buildings, but that is natural
- This is not new, there is the Watermark, two other towers, the Kimpton and Indigo
- This project fits the bill for what Parliament intended for this site
- By using the remote site, it lowers the density on the beach side
- Section 1.1 of the Development Plan states it is intended to take the form of practical guidelines to be applied with flexibility
- Parliament's intent was not to slavishly adhere to the Development Plan, the CPA can apply flexibility
- The objectors say the Development Plan is a prescriptive tool that must be slavishly abided to
- There is an accusation that CPA is in flagrant breach because it hasn't done a policy review of the Development Plan
- He read Section 10 (1) of the DPA
- The objectors say the Development Plan is no longer valid because there haven't been amendments

- There have been several amendments and surveys have been conducted
- The fact that there hasn't been an amendment to the Plan doesn't mean the existing Development Plan is not valid
- The proposed development is permitted by Law unless there are good, valid and cogent reasons to refuse it
- The objectors claim this is an ugly development
- There is a useful passage from the Bronte ruling where judge Panton stated that beauty is in the eye of the beholder and what has to be asked is, does the development cause harm to a recognized planning interest
- Panton went on to say that the CPA is entitled to disagree with the Department of Environment about mass and scale as the law entrusts the decision making power to the CPA
- That is all he has at this time
- BB asked if he could speak and CPA replied yes.
- BB explained he built Aqua Bay 35 years ago and they approached him for this project, he didn't approach them. He noted that the piece of land across the road was not tagged on, it has been there for many years for tennis courts and is part of the Strata. He explained he came up with a plan to make the redevelopment viable.
- CPA asked if the two parcels were originally one piece of land.
- BB replied no, he purchased across the road for tennis courts and it is part of the Strata
- CPA asked KM for her presentation.
- KM provided several comments:
  - She will start with the Development Plan
  - She read objective 1.1
  - Just because you can do it doesn't mean you should do it, which is what SJ says
  - CPA must look critically at development proposals
  - What BB says is 21 owners at Aqua Bay who don't live here want this development
  - CPA is not here to rubber stamp if an application falls within the maximums
  - She re-read objective 1.1
  - This is the beginning of a drastic change to the area which is that of 2 storey buildings which are spread out
  - The people of the Cayman Islands are getting hemmed in, they can't see the beach
  - This is a big departure from the character of the area
  - The Development Plan is 27 years old and it is up to Parliament to change the character of an area, not the CPA
  - If a variance is needed there has to be an extraordinary reason
  - CPA doesn't have to allow building to the maximum
  - It is not right to change the character without approval from Parliament

- The only reason for this is because BB can make it financially viable
- So it is 21 owners who don't live here versus the people of the Cayman Islands
- Just because CPA can do it, doesn't mean they must do it
- CPA noted that the Development Plan has been amended at least 30 times in the past 20 years
- KM noted there hasn't been an over-arching review of the objectives and it is well accepted that Government needs to properly review the Development Plan
- CPA asked if she is saying that planning permission shouldn't be granted for anything.
- KM replied not applications of this magnitude as it will dramatically change the area and will be a detriment to the people of the Cayman Islands
- CPA noted it doesn't disagree that the Development Plan needs to be reviewed.
- KM replied, yet it hasn't been done
- CPA noted there has been Parliamentary input and the CPA follows the law of the land.
- KM provided additional comments:
  - CPA doesn't have to approve things at maximum levels
  - Maximums don't include non-habitable ancillary space
  - She asked for the building elevation on the display screen to be enlarged
  - She says the garage is non-habitable, but the roof deck is with pools and cooking and eating areas
  - She borrowed the Building Code excerpt for the definition of habitable space from SJ and read it
  - The roof terrace has lounge areas and bathrooms
  - Indigo Bay had roof terraces and it was declined because it had proposed similar types of habitable spaces
- SJ asked KM since none of the things on the roof she mentioned have a roof over them does she still think it's a storey. KM replied yes.
- KM referred to One GT and read the reason it was adjourned regarding the proposed restaurant
- KM referred to her bundle and read the definition of a storey
- KM referred to the building elevations and noted that it seems there are partial roofs and ceilings
- CPA noted that the plans show the line of the mechanical roof above around a substantial part of the rooftop spaces including a cooking area, dining area etc so that area looks to be covered
- BB explained that his Attorneys are not part of the development team and he can provide some details on the matter. He noted the only covered area is the solar panels, there are

no ceilings. He noted this is not living space, it is open. He explained there can be bathrooms as they are exempt as being non-habitable space.

- KM noted there is a mechanical structure above it. She explained there are partial roofs otherwise there couldn't be mechanical above it, it would have to float. She noted there is a roof so it is 11 storeys and is above 130'.
- CPA sought clarification from KM that since there is mechanical above, it must be considered a storey, but what if the mechanical was on the roof deck.
- KM replied it would have a roof so it is a storey.
- There was a general discussion about the scenario of the mechanical being on the roof deck and whether exemptions in 8(4) would apply.
- KM provided several comments:
  - She read the definition of height and said she believed that the garage is excluded.
  - The building elevations don't show the height to the top of the habitable areas on the roof
  - She looked at the elevations and where the 130' height is labelled and she said the height should be measured to the floor of the mechanical level
  - She read the definition of building height again
  - Everything below the mechanical level is habitable so it is a storey and the height is 135' 6"
  - This exceeds the allowable number of storeys as it is 11 and the height is 135' 6"
- CPA noted KM spoke on Regulation 8(4), but she skipped over the part about a storey below grade and the definition from the Code she read doesn't replace 8(4) regarding a storey below grade.
- KM provided additional comments:
  - There is an argument that the garage could be a storey because some of it is below grade and some is not so it could be a part of a storey
  - The 11<sup>th</sup> storey is the roof terrace
  - Regarding density, the maximums are exceeded
  - Regarding the arguments made by SJ, 1) Parliament made a mistake, 2) to allow a totally separate parcel to be included when calculating density makes a mockery of the Regulations, it drives a bulldozer through the density provisions in the Regulations
  - Even if the parcels were contiguous, you could make an argument they would have to be combined
  - The purpose of the density provisions is to not get a lot of density in one spot
  - The Regulations are there to stop massive density by the sea
  - SJ has referenced other examples where parcels have been split, but just because it's been done wrong before doesn't mean it should be repeated



- She noted that the applicant and Department accept the need for a variance
- SJ interjected with a point of order, he did not say they accept there is a need for variance, he said if the CPA doesn't agree with him then they would ask for a variance.
- KM noted the parcels aren't contiguous
- CPA noted if they were then they would have to be combined.
- KM noted that can't happen here because of the road. She then provided additional comments:
  - Regarding Regulation 8(13), there must be exceptional circumstances and some of those are listed
  - There is nothing exceptional about these circumstances except 21 people want to make money
  - She referred to 8(13)(a) where the number of storeys is an exception
  - 8(13) gives examples of exceptional circumstances and the character of the area is included and this development is totally out of character
  - SJ says the CPA should consider the character of the additional apartment, but that is not correct, the CPA has to look at the character of the development
  - It is for Parliament to determine if the character of the area should be changed
  - CPA shouldn't be allowing this development at the maximums
  - They can't allow a variation when it is changing the character of the entire area
  - It is what CPA is here for, to stand between developers and the people of the Cayman Islands
- CPA noted that 38 units have been applied for, but her speaking notes say 27.
- KM noted they should go with what the developer says, but they need a variance because these are not contiguous parcels.
- KM noted this will dramatically change one of the jewels of the Cayman Islands.
- CPA asked for KM's final points.
- KM provided several comments:
  - She referred to Section 10(1) of the DPA and read it
  - She accepts that the CPA doesn't have to make a proposed amendment if they don't want to, but they do have to do a survey once in every 5 years
  - SJ says CPA has made reports, but if the reports were made to Parliament she can't find them
  - She's not saying CPA can't grant planning permission because of the Development Plan, but they still have to do a survey and give a report, it is in the law, they must do it
  - She's been told it has been done and there is a reason to do it so a Board can't dramatically change the character of an area and affect everyone in the Cayman Islands when driving down the road

- She has a list of conditions that they would suggest be included if approval is granted
- CPA asked two questions for the applicants to address in their final response: 1) given the definition of a storey in the Regulations, which was read aloud, is the applicant saying the mechanical level has no floor; and 2) regarding the height of a building and the number of storeys and Regulation 8(4) which exempts a storey below grade, can the applicant demonstrate how the parking level is below grade so it is not counted as a storey.
- BB replied that regarding question 2) and the measurement of grade, you take the lowest point and that is where you measure from. He offered that the top of the parking level was around 7ft above finished grade.
- CPA asked again, how is the parking level below grade (there was no answer).
- SJ provide additional comments:
  - As a legal issue, there is precedence for the matter of below grade and it started with the Caribbean Club which has a level that was considered below grade and it is above the road
  - In February, 2021, the element of non-habitable space was introduced and KM agrees it is non-habitable so we don't need to consider if it is below grade
  - KM accepts it is an exempted level because it is non-habitable
- CPA asked if they consider the parking area below grade.
- SJ replied yes they do, but besides that, it is non-habitable, it doesn't have to be both.
- CPA noted that it is clear it is not below grade.
- SJ noted it doesn't matter because it is non-habitable.
- CPA noted that since they were citing the Building Code, it says anything that is six feet or more above finished grade is considered a storey (not a basement).
- SJ noted that the definition of a storey is the space between floors or where there is no floor, the ceiling. He noted that ceiling has a specific connotation. He noted further that there is no roof or ceiling on the roof deck and none of the space up there constitutes a storey.
- CPA clarified that they are saying the mechanical level has no floor and SJ replied that is correct. CPA pointed out that the drawings (sections) showed the mechanical equipment on the upper roof level to be on a floor - a concrete slab - and if they were not on a floor how would they be accessed – by hanging from the ceiling?
- SJ noted that 8(4) exempts a list of things so if it is exempt, then it is exempt whether it has a floor or ceiling or not.
- KM noted it doesn't have to be a storey to count for height as there is habitable space on the roof terrace.

- SJ referred to Regulation 8(4) and read it. He noted that the height in 8(2) is subject to the list in 8(4). He noted in this instance the height is to the top of the roof slab and is 130'.
- KM noted they say it goes to the mechanical level.
- CPA noted first it must be determined if it is a storey.
- SJ noted that 8(2) doesn't just say storey, it gives feet as well and 8(4) says 8(2) does not apply.
- SJ admitted that some areas on the roof were habitable spaces. CPA interrupted him to ask him to clarify if that is what he just said and he was unable to refute it.
- KM noted that their 130' line is arbitrary and SJ said that is not the case.
- SJ provided additional comments:
  - KM lectured the CPA on their job
  - The job of CPA is contained in Regulation 9(3) in determining if a site is a suitable location and if there are no grounds from objectors to refuse permission
  - It seems KM is saying a developer can't make a profit
  - KM says we have a lousy Development Plan and he takes exception to that
  - He worked on the Plan for 2 years and it was a lengthy process and went through the legislators
  - They must have done something right as we are all here
  - There have been hundreds of amendments to the Development Plan
- CPA advised they are reviewing the Development Plan now.
- SJ noted that yes, this is a dramatic change as the buildings have been there 35 to 40 years, back when there was a 3 storey limit. He noted that of course what was built then will look different from what is being built today. He noted this application complies with Parliament's intent. He noted that the objectors haven't raised any valid objections.
- KM advised there are bars to granting planning permission and that is addressed in her bundle.
- CPA noted that at the back of KM's bundle there are conditions and asked if she is suggesting those be included.
- KM replied yes, if approval is granted. She noted the big one is a geo-technical report because there are underground caverns in this area.
- SJ noted he hasn't seen these conditions.
- CPA noted that the objectors mentioned safety aspects of owners having to cross the road to the other parking area so have they any thoughts regarding the how to deal with that safety aspect.
- SJ replied they would ask NRA to put in a crosswalk.

- BB noted they have excess parking on the sea side, they have 43 spaces on the ocean side for 38 apartments.
- SJ repeated that he hasn't seen the conditions.
- KM noted she can read them and SJ replied there isn't time.
- ST noted that KM said her speaking notes were identical to what she had before, but if the new notes are different then they can't be considered.
- CPA noted planning conditions are the remit of the CPA.
- KM began to read some of the other conditions regarding an overshadowing report and a construction operations plan.
- CPA noted that KM alluded to some of the owners of Agua Bay not living here and asked how many live here full time. KM replied she didn't know.
- CPA noted that a lot of the suggested conditions are ones that CPA already applies.
- CPA asked as far as a construction operations plan and given the limitations of the actual development site, where did they anticipate setting up all their construction related materials, site office etc. BB replied they would be using the land across the road.

**2.3 LUANA CHRISTINE LOOK LOY (OAD) Block 28D Parcels 128 & 130 (P23-0731) (\$150,000) (NP)**

Application for change of use from a house to a pre-school and & a sign.

**Appearance at 2:30 p.m.**

**Kenneth Ebanks declared a conflict and was placed in the Zoom waiting room.**

**FACTS**

<i>Location</i>	Astral Way, Savannah
<i>Zoning</i>	<b>Low Density Residential</b>
<i>Notification Results</i>	Objectors
<i>Parcel size</i>	1.27 acres (combined)
<i>Parcel size required</i>	CPA Discretion
<i>Current use</i>	House
<i>Proposed Use</i>	Pre-school
<i>Required Parking</i>	14
<i>Proposed Parking</i>	14

**Decision:** It was resolved to refuse planning permission, **for the following reasons:**

1) Pursuant to Regulation 9(3) of the Development and Planning Regulations (2022 Revision), educational development may be permitted in a residential zone in suitable locations subject to the applicant posting two newspaper advertisements of the proposal, *“and there are no objections, from an adjacent owner...and lodged within 21 days of the final advertisement, which the Authority regards as raising grounds for refusing such permission.”*

a) In this instance, the Authority is of the view that the subject site is not an appropriate location for a pre-school as the intensity of use, including vehicular/pedestrian traffic and general human activity, will not be consistent with the character of the surrounding low density area and this will detract from the ability of the neighbouring land owners to enjoy the amenity of the area.

Further, the Authority reviewed the existing land uses in the area and noted that the parcels along Astral Way, Galaxy Way and Seaside Way have either been developed for residential purposes or are vacant and the vast majority of the lots are developed with single family dwellings. It appears clear that the Astral Way neighbourhood was designed for residential purposes and there is a reasonableness to expect that the lots will be developed in that manner with a resultant intensity of use which is consistent with the surrounding neighbourhood.

Finally in this regard, the Authority agrees with the applicant and as recently expressed by the Early Childhood Care and Education Unit, that more pre-schools are required on the Island, but that does not mean that every proposed location for a pre-school is a suitable location and for the reasons outlined above, the Authority does not view this site to be a suitable location for a pre-school.

b) The objectors raised concerns consistent with reason 1) above and the Authority views this as having raised grounds for refusing permission per Regulation 9(3).

2) Regulation 14(2) of the Development and Planning Regulations (2022 Revision) states educational development may be permitted in any zone where it meets the needs of the community. The applicant mentioned in the meeting that 90% of the people that she surveyed and expressed interest in their children attending the proposed pre-school work in town, not in the community. By the applicant’s own admission, the pre-school does not meet the needs of the community.

### **AGENCY COMMENTS**

The Authority received comments from the National Roads Authority, Department of Environment, Water Authority, Department of Environmental Health, Early Childhood Care and Education Unit and the Fire Department.

#### **National Roads Authority**

*As per your memo dated September 11<sup>th</sup>, 2023 the NRA has reviewed the above-mentioned*

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

*General Issue*

- *A six (6) foot sidewalk shall be constructed on Astral Way, within the property boundary, to NRA standards.*
- *Whereas the estimated traffic impact to the proposed Daycare Center is considered to be minimal, there will be a significant increase in through traffic with minimal parking and no pick up or drop off of students. Parents will be parking along the roadside in front of residential owners, which will not be endorsed by the NRA.*

*Road Capacity Issues*

*The traffic demand to be generated by a Daycare Center has been assessed in accordance with ITE Code 565 Daycare Center. Thus, the assumed average trip rates per 50 students provided by ITE for estimating the daily, AM and PM peak hour trips are 4.38, 0.80 and 0.81 respectively. The anticipated traffic to be added onto Astral Way is as follows:*

<i>Expected Daily Trip</i>	<i>AM Peak Hour Total Traffic</i>	<i>AM Peak 53% In</i>	<i>AM Peak 47% Out</i>	<i>PM Peak Hour Total Traffic</i>	<i>PM Peak 47% In</i>	<i>PM Peak 53% Out</i>
219	40	21	19	41	19	21

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

*Access and Traffic Management Issues*

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

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

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

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

*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 Astral Way. 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 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 Cayman

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

### Wastewater Treatment & Disposal

- *The developer shall provide a septic tank(s) with a capacity of at least 2,000 US gallons for the proposed, based on the following calculations:*

- 

<i>BUILDING</i>	<i>UNITS/BLDG</i>	<i>GPD/UNIT</i>	<i>GPD</i>
<i>1</i>	<i>4 Classrooms = 1083 sq. ft.</i>	<i>1083 x 0.75</i>	<i>812.25</i>
	<i>1 Ex Garage = 546 sq. ft.</i>	<i>546 x 0.75</i>	<i>409.5</i>
<i>TOTAL</i>			<i>1221.75</i>

- *The septic tank shall be constructed in strict accordance with the Authority's standards. Each compartment shall have a manhole to allow for inspection and service. Manholes shall extend to or above grade and be fitted with covers that provide a water-tight seal and that can be opened and closed by one person with standard tools. Where septic tanks are located in traffic areas, specifications for a traffic-rated tank and covers are required.*
- *Treated effluent from the septic tank shall discharge to an effluent disposal well constructed by a licensed driller in strict accordance with the Authority's standards. The minimum well casing diameter for this development shall be 4''. Licensed drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.*
- *To achieve gravity flow, treated effluent from the septic tank shall enter the disposal well at a minimum invert level of 5'2" above MSL. The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well, which fluctuates with tides and perching of non-saline effluent over saline groundwater.*

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

- 1. If the proposed septic tank will be site-built or precast. (You may use the Water Authority drawing for site-built tanks available from the Authorities website or a Precast septic tank drawing if you intend to use a Precast Tank). Site Built Tanks shall be coated with Epoxytec CPP or ANSI/NSF-61 certified equivalent.*



2. *All dimensions and materials shall be provided for any site-built tanks.*
3. *Manhole extensions are permitted up to a maximum of 24” below finished grade.*
4. *Detailed specifications including make and model for (H-20) traffic-rated covers for septic tanks proposed to be located within traffic areas.*
5. *A detailed profile cross-section of the wastewater system clearly showing the plumbing from building stub out to the effluent disposal well achieving the minimum invert connection specified above. (Alternatively details of proposed lift station shall be required)*
6. *The Water Authorities updated 2020 effluent disposal well specifications.*
7. *A 30ft horizontal separation between the effluent disposal well and any stormwater drainage wells.*

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

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

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

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

#### *Stormwater Management*

*This development is located over the Lower Valley fresh water lens or within the 500m buffer zone of the lens. In order to protect the fresh water lens, the Water Authority requests that stormwater drainage wells are drilled to a maximum depth of 60ft instead of the standard depth of 100ft as required by the NRA.*

#### *Water Supply*

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

- *The developer shall contact Water Authority’s Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the public water supply.*
- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*

- *The developer shall install the water supply infrastructure within the site, under the Water Authority's supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority's web page: <http://www.waterauthority.ky/water-infrastructure>*

*The Authority 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.*

### **Early Childhood Care and Education Unit**

*All questions asked by the Ministry of Education have been answered by email September 26th as follows:*

*The square footage of each classroom, and the number of children under consideration for each space, are as follows: G-115: 290 SF : 14 children G-112: 198 SF : 8 children G-111: 330 SF : 14 children G-107: 265 SF : 12 children*

*Fixed/Immovable furniture, in the classrooms, will be minimal. I plan to install secured-shelving into rooms without a storage cupboard. There is also ample storage space, for teaching supplies etc. out-with the classrooms (but in close proximity).*

*The square footage of the children's play area (the back-yard), which will be fully-fenced with 4' chain-link fences, is 33,904 SF.*

*One wash-room (G-117) is set-back from the hallway/corridor. This will not have a main door, and half-doors are planned for the toilet stalls. The second wash-room (G-114), directly off the hallway/corridor, is intended to have a main half-door, as well as half-doors for the toilet stalls.*

*Classroom doors will have glass-panels, for visibility.*

*The Office(G-109) will house the sick bay/isolation area; the office door will have a glass panel, for visibility.*

*We have no concerns for the space ratio. As well; visibility, supervision and access have been considered and addressed.*

### **Fire Department**

*The Fire Department has approved the proposal.*

### **Department of Environmental Health**

*Solid Waste Facility:*

*1. This development require 6 (33) gallon bins and an enclosure built to the department's requirements.*

*a. The enclosure should be located as closed to the curb as possible without impeding the flow of traffic.*

*b. The enclosure should be provided with a gate to allow removal of the bins without having to lift it over the enclosure. The drawing indicated (3) 33 gallons bins being proposed. Please note that revisions are required for the solid waste enclosure as per the above.*

*Other requirements: This application is recommended for approval with the conditions that the following be submitted at the BCU stage for review for the kitchens.*

*1. The approved BCU hood details for the kitchen as food will be prepared on site. Note that a Type I hood is required for the collecting and removing grease vapours and smoke.*

*2. Specifications for the hot water heater.*

*3. Equipment schedule.*

*4. Specifications for all kitchen equipment.*

### **OBJECTION LETTERS**

See Appendix C.

### **APPLICANT'S LETTER**

#### **Letter #1**

*On behalf of our clients Dr. Luana Look Loy we are requesting variance for no sidewalk for this Block 28D Parcels 128 & 130.*

*This existing house has a wonderful fence at the roadside which would have to be removed to install a sidewalk. We believe a sidewalk would cause the preschool to appear too commercial. There are other preschools nearby and they don't have sidewalks.*

*We are sure the CPA will be understanding and sympatric to our client's wishes. This request is made under Regulation 8(13)(b) of the Development and Planning Regulations (2018 Revision).*

*We are therefore asking for special consideration from the Authority. 1. This existing house will only have miner changes to be converted to a preschool. The design is consistent with the character of the surrounding area. 2. This proposed variance 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. 3. There are other preschools in the neighbourhood without sidewalks.*

*We look forward to your kind consideration on behalf of our clients.*

#### **Letter #2**

See Appendix D.

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The subject properties are located on Astral Way in Savannah.

The application is for a 3,874 square foot change in use from a house to a pre-school centre with a total of 14 parking spaces.

Notices were sent to the required properties and two advertisements appeared in the newspaper. Seven objections have been received.

### **Zoning**

The property is zoned Low Density Residential.

### **Specific Issues**

#### **1) Suitability for pre-school**

The subject properties are zoned Low Density Residential and are located on a predominantly residential street in Savannah

The Authority should also note that Regulation 9(1) states that in a residential zone, the primary uses are residential and horticultural. In addition, Regulation 9(3) notes that educational uses may be permitted in suitable locations and if, through the newspaper advertisement process, no objections are received that the Authority views as raising ground for refusing permission.

Regulation 9 (5) also states the following:

“No use of land in a residential zone shall be dangerous, obnoxious, toxic or cause offensive odours or conditions or otherwise create a nuisance or annoyance to others”.

The Authority should determine if the subject properties are a suitable location for a pre-school per Regulation 9(3) and determine if the objections raise ground for refusing permission under the same Regulation. Finally, the Authority needs to determine if Regulation 9(5) applies in this instance.

#### **2) Parking**

The Department would note that the Regulations do not contain specific parking requirements for a pre-school. In these instances, the Department utilizes the Institute of Traffic Engineers (ITE) Parking Generation Guidelines.

The ITE standards suggest that pre-schools should have 3.5 parking spaces for each 1,000 square feet of area. The subject pre-school would have 3,874 square feet of area which results in a parking total of 14 spaces. The applicant is proposing 14 spaces.

The Authority should discuss whether the proposed parking is suitable.

At 2:30pm, Luana Look Loy appeared as the applicant. She was accompanied by her Attorneys-at-law, J, Samuel Jackson and Selina Tibbetts and her architect, Omar McLean. Georgia Anderson, Deloris Cameron, Robert Cameron and Tammy Seymour appeared as objectors. Summary notes are provided as follows:

- Ms. Look Loy (LL) provided several comments:
  - This is a personal and important proposal
  - In 2020, she had her first child at the age of 40
  - She was unaware of the difficulty in getting into a pre-school and she didn't put her child on a waiting list
  - The schools were all filled and with waiting lists
  - They couldn't find any schools that were suitable for their needs
  - She decided to open a pre-school
  - After a lengthy search they found a location
  - This will meet an urgent need in the community
  - 153 people have expressed interest in the 48 proposed spaces
  - She can assure everyone she will respect the community
  - They will be a good neighbour
- Mr. Jackson (SJ) advised there is no physical development other than paving the parking area. He explained there had been another objection, but they were not a proprietor of land.
- CPA asked if that was the objection from a company and SJ replied that is correct.
- Ms. Seymour (TS) explained that the land is owned by a trust.
- SJ noted that often people that aren't legally entitled to object, do object.
- CPA asked TS if the company is her company.
- TS replied that JDF is a trust between herself and her mother as a means to segregate assets from the company where she is a Director.
- CPA asked TS if she is a Director of the trust and TS replied yes.
- SJ replied he isn't troubled by allowing the objection. He noted that there is no real construction, just converting the house to a pre-school. He noted the objections are to a commercial use, but this is an institutional use. He noted Government created the Institutional zone to spot zone existing institutions. He noted this issue should be added to the list of items to address in the Plan Cayman review.
- SJ then provided several additional comments:

- Some people may be perplexed why this type of use is in the LDR zone
- There is no available Institutional zoned land in the area
- Which is why LDR gets developed with a myriad of uses
- There is a lot of undeveloped residential zoned land
- Regarding compatibility, he feels the use is compatible with the zone
- Section 1.4 of the Development Plan states that the designated land use of each zone is not in any way inflexible
- You also have to look at what the Regulations say
- There is no merit to say this use is incompatible
- It is not for the applicant to prove the worthiness of the application
- It is for the objectors to demonstrate that harm would ensue from the development
- At certain times of the day the building will be populated with children
- His client did all the necessary research
- Clearly this facility is badly needed
- Per the Plan Cayman review, more pre-schools are needed in residential areas to help with decreasing traffic
- It makes sense for a low impact use like this to be in a residential area
- He approached the display screen and pointed out the subject site and then pointed out a basketball court, church, restaurant, political office and the commercial hub of Savannah
- His client has a building that is large enough for the proposed use and there are no setback issues or other legal impediments
- The objectors have put forward an idea that this is a protected neighbourhood and he advised there are no restrictive covenants on this land
- There will be no traffic impact as people will use Homestead and not drive through the neighbourhood
- There is no issue with functionality
- He doesn't understand the concern about noise from toddlers who for most of the time will be inside and supervised
- He doesn't see how this will negatively impact the area
- CPA asked if there are other pre-schools in the area.
- Mr. Cameron (RC) replied there are two.
- SJ provided additional comments:

- They have an updated report from NRA regarding a need for a 6' sidewalk
- It doesn't make sense to demolish an existing structure to build a sidewalk and then re-build the structure
- As stated in his letter, NRA's proposal is a land take without compensation
- There is a process to create a public road
- Montessori by the Sea, Birch Tree Hill school, the Humane Society, Montessori West and Island Primary are all in the LDR zone
- If CPA thought those developments would cause damage then they wouldn't have been approved
- Early Childhood Care clearly shows there is a shortage of pre-schools
- It is bad planning to put them all in one place, they need to be spread out
- He will rely on his written submissions
- There is no application to rezone the land, that is a different type of application and is not needed
- TS provided several comments:
  - She is not here to dispute such facilities and the need for them
  - She is here as a neighbour and what they have to deal with
  - She bought the land in 1996 and signed an agreement with certain limitations such as the building size and it had to be of a certain level
  - The area is seen as residential with single family homes
  - The crux of the matter is that the application doesn't make any sense as home owners
  - They have sent in their letters and don't want to re-hash them
  - This is a neighbourhood, Savannah Acres, and it is considered single family residential
  - It is like Salt Creek, it is for families
  - There are amenities at Countryside
  - There is a social fabric in this community
  - This type of development should be on the main road
  - There are a number of objectors and the majority should rule
  - The neighbours are saying this is not a use they want in the neighbourhood
  - She is struggling to understand how this has come up
  - There are areas designated for this type of use

- This will change the single family residential area
- The majority of people in the neighbourhood don't want it
- CPA asked if the other objectors have been there a long time.
- An objector replied they bought the land in 2009 and built the house in 2017 and the land is zoned residential and they never would have built here if there was to be commercial uses in the neighbourhood.
- RC advised he wouldn't have spent \$1.3M on his house if there was a pre-school next door.
- An objector noted that SJ says traffic won't affect them, but how would he know. They noted that people won't reverse out of the road, they will use the neighbourhood as a short cut.
- RC approached the display screen and pointed out where his property is located as well as the other objectors.
- An objector noted that they have a Ring alarm and the video shows vehicles always driving by and they aren't neighbours.
- RC noted that SJ says this is not a public road so they could put up a gate and everyone would need a swipe card.
- Mr. McLean (OM) noted that his client would be allowed to enter.
- CPA noted that the road does seem to be heavily used.
- SJ noted that when Montessori by the Sea was proposed it was resisted by a lot of people who said it would have an adverse effect on traffic which was already bumper to bumper. He explained that at that time he pointed out that if it is already bumper to bumper how can it get any worse.
- TS explained she used to use Old Prospect Point Road as a cut through but she stopped and now there is a sign limiting access. She asked that for a facility like this, shouldn't there be proper two-way traffic. She noted this is a private road and it is not capable of sustaining more activity like this from a pre-school.
- CPA asked how many kids would be in the school. LL replied 48. CPA asked their ages and LL replied 2 to 5.
- SJ provided several comments:
  - they have to rely on traffic experts and NRA says traffic impact will be minimal, so who are they to question the experts
  - it seems the objections are based on a frustration with the existing situation
  - all he is saying is that parents will take the shortest way to leave the site
  - this will not significantly increase traffic
  - this is a pre-school, not a shop



- kids are dropped off and picked up so there are 2 trips per day for 48 kids
- if they were talking about hundreds of kids then maybe that would be different
- there is nothing new about a school or pre-school in a residential area
- there will be no parking on the road, parents drive in and drop off and pick up
- it is common sense logic that people won't park on the road to drop off their kids
- CPA asked if the hours of operation are firm hours.
- LL replied they are flexible for either a half day or a full day. She explained that 90% of the people that responded to this proposal said they work in town so they would have firm hours.
- SJ advised this is just NIMBY. He noted that there are two large parcels with the house in the middle with large setbacks from the road. He noted if the objectors are already complaining about traffic, then it won't be any worse. He explained this isn't a democratic process, the majority does not rule. He advised they notified 128 owners and there are 6 objectors.
- An objector advised they never received notice.
- CPA advised that the applicant states they sent the notices by registered mail.
- OM explained he used the ownership information from Lands and Survey and mailed them through the Post Office.
- An objector stated that ¾ of the neighbours said they didn't get a notice.

**2.4 20 NORTH DEVELOPMENT (TAG) Block 5C Parcel 77 (P23-0940) (\$12.658 million) (NP)**

Application for 95 apartments, cabanas, pool, gym, storage and a sign.

**An appearance was scheduled for 2:00 p.m., but given that the Authority was far behind on the times for the appearances, the applicant requested the matter be adjourned to a later date.**

**FACTS**

<i>Location</i>	Willie Farrington Drive in West Bay
<i>Zoning</i>	<b>Low Density Residential</b>
<i>Notification Results</i>	Objections
<i>Parcel size</i>	6.34 acres
<i>Parcel size required</i>	25,000 sq ft
<i>Current use</i>	Dwelling
<i>Proposed use</i>	Apartments
<i>Building Footprint</i>	46,854 square feet

<i>Building Area</i>	84,389 square feet
<i>Units Permitted</i>	95
<i>Units Proposed</i>	95
<i>Bedrooms Permitted</i>	152
<i>Bedrooms Proposed</i>	119
<i>Parking Required</i>	143
<i>Parking Proposed</i>	177

**BACKGROUND**

July 19, 2023 (CPA/16/23; Item 2.3) – The Authority resolved to adjourn the matter in order to obtain NRA comments as well as confirm the number of objectors on file.

August 16, 2023 (CPA/17/23; Item 2.5) (P23-0186) – It was resolved to refuse planning permission for the following reasons:

- 1) The Authority is of the view that the applicant failed to demonstrate that the subject site is a suitable location for apartments per Regulation 9(8). In this regard, the Authority is of the view that the proposed apartments are not in keeping with the character of the area in terms of mass, scale and intensity of use and this will detract from the ability of surrounding land owners from enjoying the amenity of their properties.

The apartment and density number for P23-0186 are the same as for the current application. The proposed number of parking spaces has decreased from 219 to 177. The building designs are the same and the general circulation though the site is essentially the same. The new application does include a drainage swale around the perimeter of the property and the court yards will be used as catch basins.

**Decision:** It was resolved to adjourn the application at the applicant’s request and re-schedule the matter to be heard on March 27, 2024 at 2:30pm.

**AGENCY COMMENTS**

The Authority received comments from the Department of Environment, National Roads Authority, Fire Department and the Water Authority.

**Department of Environment**

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

*The application site consists primarily of tidally flooded mangrove forest and woodland (refer to Figure 1) and features several ponds or pools.*

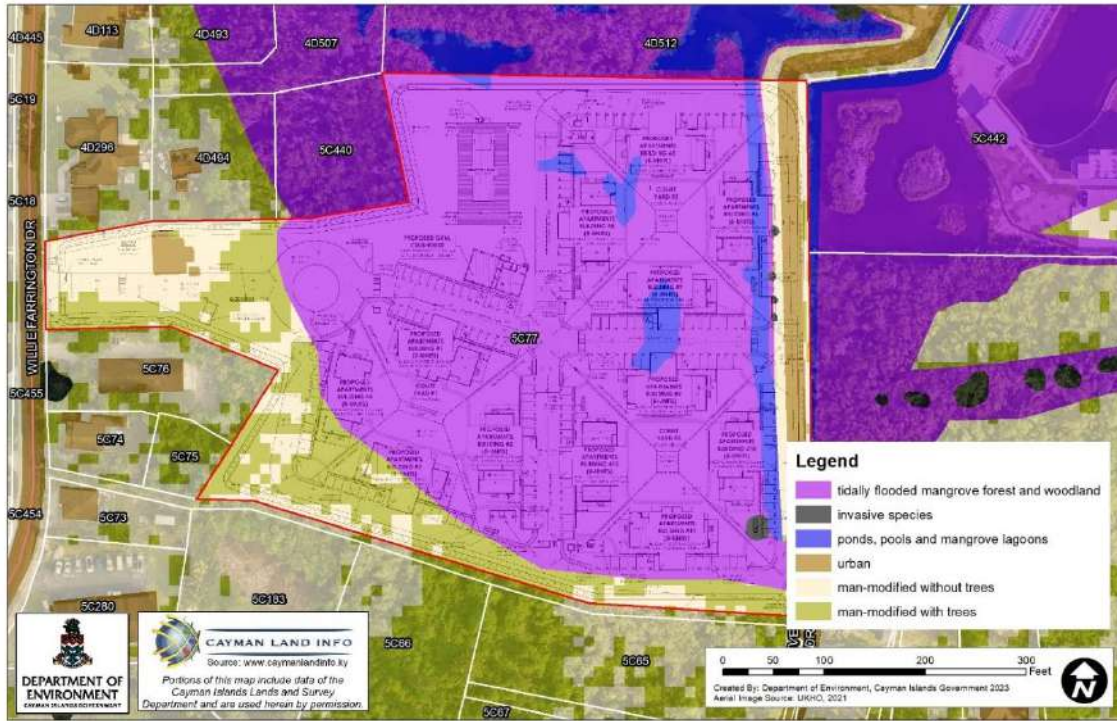


Figure 1: Land cover map overlaid on proposed site plan, note the majority of the site is covered by tidally flooded mangrove forest and woodland (Source: DoE, 2023)

The site is very low lying, averaging around 1 foot above Mean Sea Level (refer to Figure 2). As such, drainage is likely to be a significant concern. We are pleased to see that the revisions to the plan feature a number of areas that have been used to incorporate detention basins or retention ponds and the perimeter of the property features a swale. If incorporated effectively, these measures can be beneficial to the drainage of the site, as well as the surrounding area. We have not been provided with a comprehensive Stormwater Management Plan for detailed review, however we do support the inclusion of these aspects.

We further recommend that the applicant considers the use of porous or permeable paved surfaces in areas of hard standing such as the driveways and parking areas.

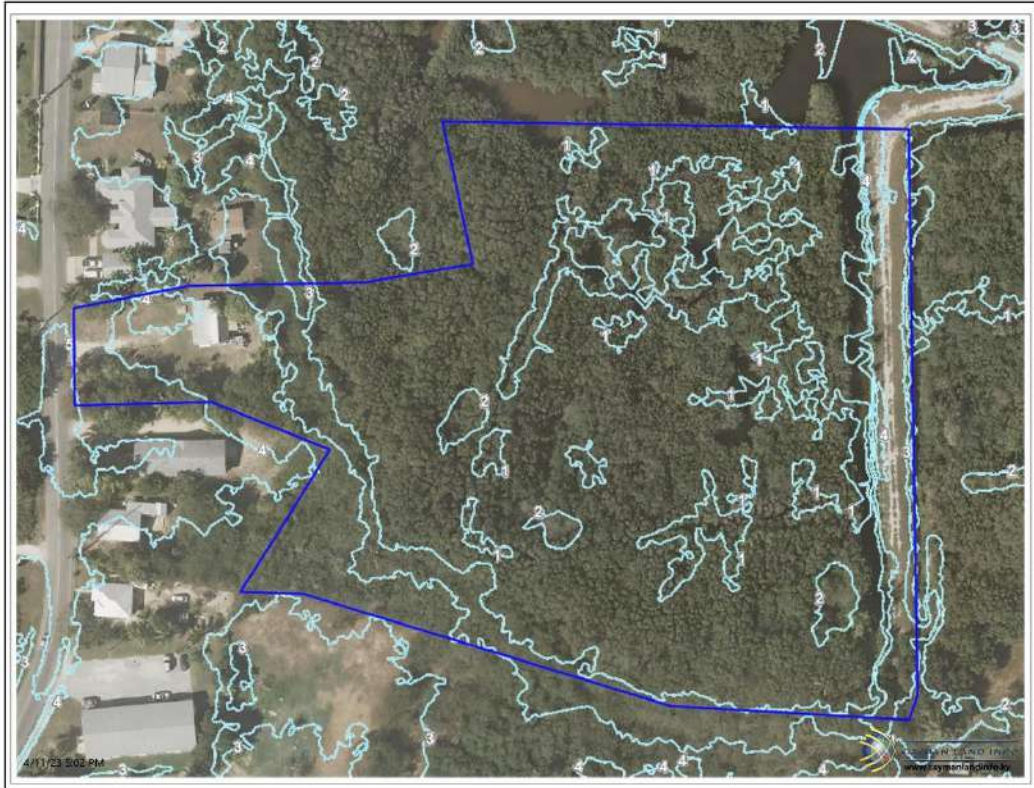


Figure 2: Site contours overlaid on 2018 aerial imagery (Source: LIS, 2018)

*We recommend that native plants are incorporated into the landscaping scheme. Native plants are best suited for the conditions of the site, including the temperature and the amount of rainfall. They are climate-appropriate and require less maintenance and irrigation. Landscaping with native vegetation also provides ecological benefits by creating habitat and food for native fauna such as birds and butterflies, promoting biodiversity and providing valuable ecosystem services. Stormwater management, flooding and drainage could all be greatly improved by retaining as much of the original wetland vegetation as possible.*

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

*Best management practices should be adhered to during construction to reduce impacts on the environment. In particular, control measures should be put in place to address pollution from expanded polystyrene (EPS) beads on construction sites, for example those used in insulating concrete forms (ICF). Polystyrene is not biodegradable, and the EPS beads can be*

consumed by wildlife when it enters the food chain. These beads are very difficult to remove once they enter the environment and they do not naturally break down.

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

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

### **Water Authority Cayman**

The Water Authority's requirements for the proposed development are as follows:

#### Wastewater Treatment and Disposal

The developer, or their agent, 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 16,050 US gallons per day (gpd), based on the following calculations.

BUILDING	UNITS/BLDG	GPD/UNIT	GPD/BLDG	GPD
Building 1	5 x 1-Bed Units	150gpd/1-Bed	750	750
	2 x 2-Bed Units	225gpd/2-Bed	450	450
Building 2-12	66 x 1-Bed Units	150gpd/1-Bed	900	9,900
	22 x 2-Bed Units	225gpd/2-Bed	450	4,950
<b>TOTAL</b>				<b>16,050</b>

- Treated effluent from the ATU shall discharge to an effluent disposal well constructed by a licensed driller in strict accordance with the Authority's standards. The minimum well casing diameter for this development shall be 8". Licensed drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.
- To achieve gravity flow, treated effluent from the ATU must enter the disposal well at a minimum invert level of 4'5" 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.

#### Water Supply

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

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

### **National Roads Authority**

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

#### *General Issues*

*The NRA request that the CPA have the applicant provide and consider,*

1. *The overall intensity of the site and provide a comprehensive phasing plan;*
2. *The area is prone to flood and if this application is approved as is it will cause major flooding issues for homes etc. around it, therefore, the applicant needs to think more holistically. The applicant needs to keep in mind the intensity of the site as well as the use of fill and how it will affect the surrounding parcels; simply stated the SWMP will guide how the site is designed;*

*Therefore, the NRA requests that the CPA have the applicant develop a strategic SWMP not just for the site but for the area as a whole considering the most recent development on Block 5C Parcel 442;*

*It is noted that the applicant put a six (6) ft drainage swale around the site, this will be inadequate, a swale if used needs to be a minimum of ten (10) ft with a proper outflow; and*

3. *How will access be provided for a variety of parcels (specifically Block 5C Parcels 183, 66, and 65) in the area, who at the moment only have access off of a six (6) ft. public road. It is noted that the applicant has noted Genevieve Bodden Drive as an alternate access, however, Genevieve Bodden Drive is not built to minimal standards and will not be able to handle any additional traffic. The applicant will need to find an alternate route.*

#### *Road Capacity Issues*

*The traffic demand to be generated by a residential development of ninety-five (95) 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, and PM peak hour trips are 6.65, 0.51 0.51 and 0.62 respectively. The anticipated traffic to be added onto Willie Farrington Drive is as follows:*

<i>Expected Daily Trip</i>	<i>AM Peak Hour Total Traffic</i>	<i>AM Peak 20% In</i>	<i>AM Peak 80% Out</i>	<i>PM Peak Hour Total Traffic</i>	<i>PM Peak 65% In</i>	<i>PM Peak 35% Out</i>
<b>631</b>	<b>48</b>	<b>10</b>	<b>38</b>	<b>59</b>	<b>38</b>	<b>21</b>

*Based on these estimates, the impact of the proposed development onto Willie Farrington Drive is considered to be moderate.*

*Access and Traffic Management Issues*

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

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

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

*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 Willie Farrington Drive. Suggested dimensions of the ‘hump’ would be a width of 6 feet and a height of 2-4 inches. Trench drains often are not desirable.*

- *Curbing is required for the parking areas to control stormwater runoff.*
- *Roof water runoff should not drain freely over the parking area or onto the surrounding property. Note that unconnected downspouts are not acceptable. We recommend piped connection to catch basins or alternative stormwater detention devices. Catch basins 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%20Detail.s.pd>*

*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.*

## **Fire Department**

The Fire Department has stamp approved the drawings.

## **OBJECTORS LETTERS**

Please see Appendix E.

## **APPLICANT'S LETTER**

### Letter #1

*Further to the application submitted in relation to the above referenced Project, we hereby request for a Lot Width Variance which requires a minimum 100' in a Low-Density Residential Zone.*

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

- (1) **Under Regulation 8 (13)(d), the adjoining property owners have been notified of the application.**



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

- a. *While the lot width adjacent to the main public road is at 87'-1" and below the required 100' minimum width wide, due to the irregular shape of the property.*
- b. *In consideration of the irregular shape of the property, the width of the general concentration of the development is approximately 418' wide and the entire lot size is more than sufficient to sustain the full capacity of the development.*
- c. *The design of the entire development does not intrude, obstruct, or disturb the existing community and neighborhood.*

*We look forward to the CPA board's favorable consideration to this request for variance.*

#### Letter #2

See Appendix F

### **PLANNING DEPARTMENT ANALYSIS**

#### **General**

The subject property is located on Willie Farrington Drive in West Bay.

The proposal is for 95 apartments with 119 bedrooms and parking for 177 vehicles.

Adjacent landowners were notified by Registered Mail and a total of 4 objections have been received. One of the objectors also provided photos of some existing flooding in the area. Another objection was received but was determined to be located beyond the notification radius.

#### **Zoning**

The property is zoned Low Density Residential.

#### **Specific Issues**

##### **1) Suitability for Apartments**

Regulation 9(8) states that apartments are permitted in suitable locations in a Low Density Residential Zone.

The Department has reviewed the GIS mapping for the area and would note that there appears to be apartments and townhouses existing to the east and south of the subject property.

The Authority should discuss whether the area is suitable for the proposed number of apartments. It should be noted that the previous application for 95 apartments was refused because the applicant failed to demonstrate that the site is suitable for apartments.

## **2) Proposed Lot Width (87' vs 100')**

Regulation 9(8)(g) states that the minimum lot width for townhouses shall be 100 feet.

The subject parcel has a minimum width at the road of 87 feet and it is noted that the property flares out to a greater width where the majority of development is proposed.

The applicant has submitted a variance letter and the Authority should discuss whether the request is justified in this instance.

**2.0 APPLICATIONS**  
**(Items 2.5 to 2.30)**

**2.5 NEAR BY THE SEA INVESTMENTS LTD. (AD Architecture Ltd.) Block 2C Parcels 16 & 179 (P23-0549) (\$160,000) (MW)**

Application for an ATF change of use from house to three apartments.

**FACTS**

<i>Location</i>	North West Point Rd., West Bay
<i>Zoning</i>	<b>Low Density Residential</b>
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	0.2 ac. (8,712 sq. ft.)
<i>Parcel size required</i>	25,000 sq. ft.
<i>Current use</i>	Existing house
<i>Proposed building size</i>	1,207 sq. ft.
<i>Total building site coverage</i>	13.85%
<i>Allowable units</i>	3
<i>Proposed units</i>	3
<i>Allowable bedrooms</i>	4
<i>Proposed bedrooms</i>	3
<i>Required parking</i>	5
<i>Proposed parking</i>	5

**Decision:** It was resolved to adjourn the application for the following reason:

- 1) The applicant is required to submit written reasons why lot size and lot width variances should be granted.

**AGENCY COMMENTS**

The Authority received and considered comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment.

**Water Authority**

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

**Wastewater Treatment & Disposal**

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

<b>BUILDING</b>	<b>UNITS/BLDG</b>	<b>GPD/UNIT</b>	<b>GPD</b>
Unit 1	1 x 1-Bed Unit	150gpd/1-Bed Unit	150
Unit 2	1 x 2-Bed Unit	225gpd/2-Bed Unit	225
Unit 3	1 x 1-Bed Unit	150gpd/1-Bed Unit	150
<b>TOTAL</b>			<b>525</b>

- The septic tank shall be constructed in strict accordance with the Authority's standards. Each compartment shall have a manhole to allow for inspection and service. Manholes shall extend to or above grade and be fitted with covers that provide a water-tight seal and that can be opened and closed by one person with standard tools. Where septic tanks are located in traffic areas, specifications for a traffic-rated tank and covers are required.
- Treated effluent from the septic tank shall discharge to an effluent disposal well constructed by a licensed driller in strict accordance with the Authority's standards. The minimum well casing diameter for this development shall be 4". Licensed drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.
- To achieve gravity flow, treated effluent from the septic tank shall enter the disposal well at a minimum invert level of 4'7" above MSL. The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well, which fluctuates with tides and perching of non-saline effluent over saline groundwater.

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

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

6. *The Water Authorities updated 2020 effluent disposal well specifications.*
7. *A 30ft horizontal separation between the effluent disposal well and any stormwater drainage wells.*

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

- *The existing building on the parcel 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.*

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

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

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

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

#### **Water Supply**

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

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

*If there are questions or concerns regarding the above, please email them to: [development.control@waterauthority.ky](mailto:development.control@waterauthority.ky)*

#### **National Roads Authority**

*As per your email dated November 2nd, 2023, the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

##### *General Issues*

- *Entrances (at throat) shall be twenty-four (24) feet wide.*

- *Two-way driveway aisles shall be a minimum of twenty-two (22) ft. wide.*
- *For North West Point Road which has an operational speed of forty (40) miles per hour, the minimum stopping sight distance is three-hundred and five (305) feet. The sight line is currently being obstructed by the fence on either side of the property.*



*The NRA therefore requests that the CPA have the applicant (1) revise the height or layout of the fence on both sides of the property so that the sightline is not obstructed, and (2) modify the driveway so that its throat and driveway aisle widths are 24 feet and 22 feet respectively.*

***Road Capacity Issues:***

*The traffic demand to be generated by a residential development of three (3) dwelling units has been assessed in accordance with ITE Code 220 – Apartments. Thus, the assumed average trip rates per dwelling unit provided by the ITE for estimating the daily, AM and PM peak hour trips are 6.65, 0.51 and 0.62 respectively. The anticipated traffic to be added to North West Point Road is as follows:*

<i>Expected Daily Trips</i>	<i>AM Peak Hour Total Traffic</i>	<i>AM Peak 20% In</i>	<i>AM Peak 80% Out</i>	<i>PM Peak Hour Total Traffic</i>	<i>PM Peak 65% In</i>	<i>PM Peak 35% Out</i>
<i>20</i>	<i>2</i>	<i>1</i>	<i>1</i>	<i>2</i>	<i>1</i>	<i>1</i>

*Based on these estimates, the impact of the proposed development on North West Point Road is considered to be minimal.*

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

*Entrance and exit curves shall be no less than fifteen (15) feet in radius.*

*A six (6) foot sidewalk shall be constructed on North West Point Road within the property boundary, to NRA specifications (available on our website at: <https://www.caymanroads.com/upload/files/3/Sidewalk%20&%20Curbing%20Details.pdf%20>).*

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

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

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

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

- The applicant shall demonstrate, prior to the issuance of any Building Permits, that the Stormwater Management system is designed to embrace storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and ensure that surrounding properties and/or nearby roads are not subject to stormwater runoff from the subject site.*
- The stormwater management plan shall include spot levels (existing and finished levels) with details of the overall runoff scheme. Please have the applicant provide this information prior to the issuance of a building permit.*
- Construct a gentle 'hump' at the entrance/exit (along the entire width of each driveway) in order to prevent stormwater runoff from and onto North West Point 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 (Per NRA specifications (available at: <https://www.caymanroads.com/upload/files/4/628e6599be2c9.pdf>) are to be networked, please have the applicant provide locations of such wells along with details of depth and diameter prior to the issuance of any Building Permits.*

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

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

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

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

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

## **Department of Environmental Health**

*Solid Waste Facility:*

*1. This development require 3 (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.*

*Minimum Enclosure Dimensions:*

*Length: 7.5 feet*

*Width: 2.5 feet*

*Height: 2.5 feet*

## **Department of Environment (16-11-23)**

*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 objections to the after-the-fact change of use as the application site is man-modified and of limited ecological value.*



**Fire Department**

Approved for Planning Permit Only 14 Nov 23

**PLANNING DEPARTMENT ANALYSIS**

**General**

The application is for an ATF change of use from house to triplex; 1,207 sq. ft located on North West Point Rd., West Bay.

**Zoning**

The property is zoned Low Density Residential.

**Specific Issues**

**1) Lot Size**

Regulation 9(8)(f) of the Development & Planning Regulations (2022 Revision) states “ *the minimum lot size for guest houses and apartments is 25,000 sq. ft.*” The proposed lot would be approximately **8,712 sq. ft.** a difference of **16,288 sq. ft.** There do not appear to be any similar developments on the same size parcel in the area per a review of Caymanlandinfo.

**2) Lot width**

Regulation 9(8)(g) of the Development & Planning Regulations (2022 Revision) states “*the minimum lot width for guest houses and apartment buildings and townhouses is 100’-0”*. The current lot width would be **64’-11”** a difference of **35’-1”** .

**2.6 OASIS BEACH BAY DEVELOPMENTS (Cayman Survey Ass. Ltd.) Block 38C Parcel 72 (P23-1182) (EJ)**

Application for a sixteen (16) lot subdivision.

**Haroon Pandohie and Joshua Bernard declared conflicts and left the meeting room. Ron Sanderson sat as Acting Executive Secretary.**

**FACTS**

<i>Location</i>	Pasture Lane, Bodden Town
<i>Zoning</i>	<b>LDR</b>
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	20.35 ac. (886,446 sq. ft.)

*Parcel size required* 10,000 sq. ft.  
*Current use* Approved Apartments

**BACKGROUND**

February 7, 2018 (**CPA/03/18; Item 2.11**) – The Authority granted permission for a ten-lot subdivision. The subdivision was not finalized.

June 28, 2019 (**CPA/13/19; item 2.10**) - the Authority granted outline planning permission for 48 apartments

September 25, 2019 (**CPA/20/19; item 2.17**) - the application for final planning permission was adjourned in order for the applicant to submit a master plan, the source of fill material and a stormwater management plan

October 9, 2019 (**CPA/21/19; Item 5.1**) – the Authority granted final planning permission for 48 apartments which included a condition that the applicant shall submit a Stormwater Management plan designed in accordance with the requirements of the National Roads Authority (NRA) and approved by the Central Planning Authority. The applicant should liaise directly with the NRA in submitting the stormwater management plan. Regardless of the requirements of the NRA, the plan must include a low wall or berm along the common boundaries with 38B 540 to 545 and 38B 576. Permits were applied for, but never issued.

August 05, 2020 (**CPA/12/20; Item 2.6**) – The Authority granted permission for a pool, two-storey cabana, 6’ wall and modification to site plan.

**Decision:** It was resolved to adjourn the application for the following reason:

- 1) The applicant is required to submit a revised plan showing:
  - a) The internal subdivision road with a minimum width of 30’
  - b) The right-of-way over the remainder parcel replaced with a 30’ wide road parcel

**AGENCY COMMENTS**

The Authority received and considered comments from the Water Authority, National Roads Authority and Department of Environment.

**Water Authority**

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

**Wastewater Treatment**

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

**Stormwater Management**

- *This development is located over the (Lower Valley) fresh water lens or within the 500m buffer zone of the lens. In order to protect the fresh water lens, the Water Authority requests that stormwater drainage wells are drilled to a **maximum depth of 60 ft** instead of the standard depth of 100ft as required by the NRA.*

### **Water Supply**

*The proposed development site is located within the Water Authority's piped water supply area, however, please be advised that the connection of a proposed development to the Water Authority's piped water supply **may** require an extension.*

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

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

### **National Roads Authority**

*As per your memo dated February 6", 2024 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

#### **General Issues**

*The NRA has serious concerns about the impact this proposed subdivision will have on the drainage in the surrounding area. The NRA is especially concerned about the loss of stormwater storage that would result from filling the site (proposed road and lots only) for the areas west and south of the subject lands (the NRA estimates that a catchment area of about 46 acres) are dependent on the subject lands for surface run-off during heavy rainfall events (refer to attached map for reference).*

*In a previous decision letter dated October 12, 2019 (CPA/21/19; Item 5.1) (3) of a previous application for the subject land, the applicant was required to include a low wall or berm along common boundaries with 38B 540 to 545 and 38B 576. This mitigation measure was to*

*assist with reduce the flooding of surrounding residents. A narrow berm was eventually installed back in 2020 after extensive flooding was experienced during a tropical depression.*

*The NRA still supports this feature of the development; however, the NRA feels that this feature should be revisited and sized appropriately for the entire extent of the subject parcel. It is therefore NRA's recommendation that the CPA require the applicant submit a stormwater management plan with this application addressing the above-mentioned concerns prior to granting permission for the development.*

*Additionally, per the NRA's Design and Construction Specifications for Subdivision Roads & Property Development*

- 5.0 Access Requirements - All subdivisions must have access to an existing public road. "Rights of Way" and "access easements" will not be approved as public access to subdivisions.*
- A thirty (30) ft. wide road parcel needs to be provided in order to have adequate access as the NRA does not endorse the use of vehicular ROWs.*
- The legal access to 38C72 is through Starwood Dr and not Pasture Dr. over 38C231. If this is the main access, applicant will be required to provide more details.*
- Based on the location of the subdivision and the length of the road, the application will be required to provide a traffic calming plan, where controls are in place to mitigate speeding and other unwanted behaviours on the road.*

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

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

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

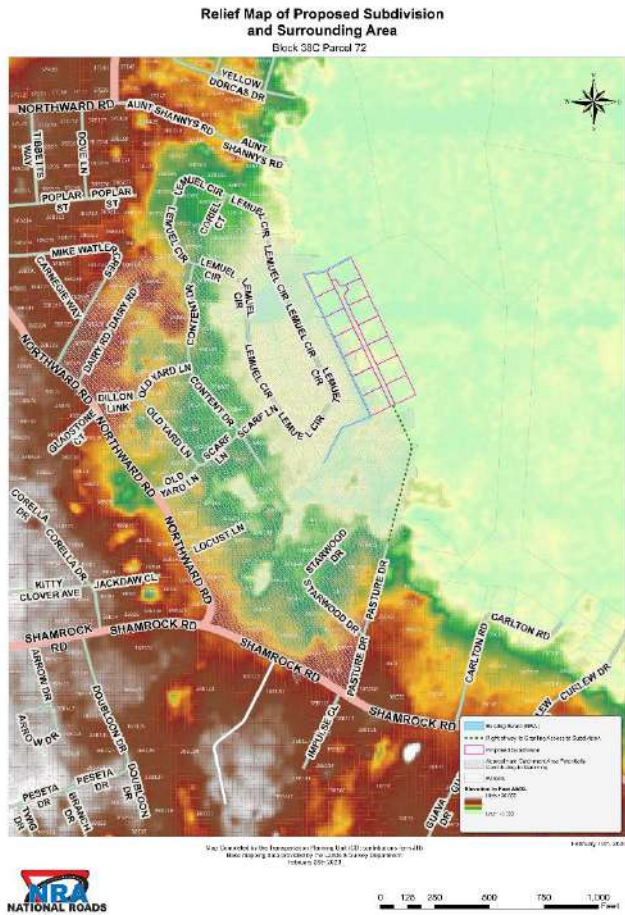
### ***Infrastructure Issues***

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

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

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

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



**Department of Environment (February 29, 2024)**

*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).*

**Advice for the Applicant**

*The area of the subdivision allocated for residential lots is man-modified and of limited ecological value, having already been cleared for development. The remainder parcel consists of seasonally flooded mangrove forest and woodland (primary habitat), as well as several ponds and pools. We would not support the clearing of the remainder of the site at this time. Land clearing should be reserved until the development of individual lots is imminent (through the granting of planning permission for development on those particular lots). This allows the opportunity for the individual lot owners to retain as much native vegetation as possible. Clearing the entire site prematurely removes the choice from the individual lot owners and*

*removes any value the habitat could provide in the time between the preparation of a subdivision and the development of an individual lot.*

*We note that the proposed LPP parcel is located on an already cleared section of the site. We recommend this is moved to an area of primary habitat such that the benefits of this habitat can be retained. LPP lots that remain in a natural state can be modified (e.g. with trails or walking paths) so that they provide amenity to the new residents.*

*Primary habitat is mature habitat in its natural state, otherwise uninfluenced by human activity where ecological processes are not significantly disturbed. These habitats are often very old, existing long before humans and may consist of many endemic and ecologically important species. Primary habitat is in severe decline and becoming a scarce and highly threatened resource as a result of land conversion for human activities.*

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

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

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

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

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

### **APPLICANT'S LETTER**

*Please find attached our scheme to Subdivide 38C 72 into the following configuration:*

- *13 Residential Lots*
- *1 Lot for LPP*
- *1 Road Lot*
- *1 Remainder Lot*

*Our client has previously received Approval for a Building Strata Development on this parcel, but now wishes to apply for a Subdivision as an alternative option. The previous Application allowed for a 22' wide Estate Road and the developer wishes to retain this option with the same Easement connection to Pasture Drive over 38C 231 which she also owns.*

*Due to the shape of the parent parcel and road layout, a Variance is required for the dimension between Lots 1 & 8 as well as a Variance request for the 22' wide road.*

*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 applicant is requesting planning permission for sixteen (16) lots, consisting of fourteen (14) house lots, one (1) road lot and one (1) remainder lot which is locate of Pasture Lane, Northward in Bodden Town.

#### **Zoning**

The property is zoned Low Density Residential.

#### **Specific Issues**

##### **1) Land for Public Purpose**

As proposed, the fourteen (14) house lots meets the minimum lot size requirements per regulations; however, there are no provisions for LPP; bearing in mind that Regulation 28(1) gives the CPA the authority to require up to 5% of the land area be set aside for public purposes according to the size of a proposed subdivision.

##### **2) Subdivision Access**

The subject parcel has a 30' vehicular right-of-way over 38B327Rem1 (now 38C 231) from Starwood Drive and Pasture lane. The NRA recommends the lots be accessed by a road parcel, which the CPA has traditionally supported.

### 3) Lot width

The Authority is asked to consider if it is satisfied with the width of lots 7 & 8 due to the truncation of the road parcel, proposed at 75' vs 80'.

## 2.7 HOME & OUTDOOR WAREHOUSES (Kozaily Designs) Block 19E Parcel 153 (P23-0287) (\$2,000,000) (MW)

Application for a 7 unit warehouse building.

### FACTS

<i>Location</i>	Caterpillar Ln., George Town
<i>Zoning</i>	<b>Heavy Industrial</b>
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	0.28ac. (12,196.8 sq. ft.)
<i>Parcel size required</i>	CPA discretion
<i>Current use</i>	existing industrial buildings and containers that have not been granted planning permission
<i>Proposed building size</i>	10,121.11 sq. ft.
<i>Total building site coverage</i>	47.35%
<i>Required parking</i>	10
<i>Proposed parking</i>	11

### BACKGROUND

November 23, 2022 (CPA/28/22; item 2.6)(P22-0590) – approval granted for a warehouse building on the adjoining property, Block 19E Parcel 149.

**Decision:** It was resolved to adjourn the application and invite the applicant to appear before the Authority to discuss concerns regarding:

- The existing illegal development on site
- Deficient front setback
- Deficient solid waste setback
- Excessive site coverage
- NRA's concerns regarding access



**AGENCY COMMENTS**

The Authority received and considered comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment.

**Water Authority**

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

**Wastewater Treatment & Disposal**

- *The developer shall provide a **septic tank(s)** with a capacity of at least 2,000 US gallons for the proposed, based on the following calculations:*

<b>BUILDING</b>	<b>UNITS/BLDG</b>	<b>GPD/UNIT</b>	<b>GPD</b>
Warehouse	7 x Toilet	150gpd/Toilet	1,050
<b>TOTAL</b>			<b>1,050</b>

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

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

1. *If the proposed septic tank will be site-built or precast. (You may use the Water Authority drawing for site-built tanks available from the Authorities website or a Precast septic tank drawing if you intend to use a Precast Tank). Site Built Tanks shall be coated with Epoxytec CPP or ANSI/NSF-61 certified equivalent.*
2. *All dimensions and materials shall be provided for any site-built tanks. Manhole extensions are permitted up to a maximum of 24” below finished grade.*
3. *Detailed specifications including make and model for (H-20) traffic-rated covers for septic tanks proposed to be located within traffic areas.*

4. *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)*
5. *The Water Authorities updated 2020 effluent disposal well specifications.*
6. *A 30ft horizontal separation between the effluent disposal well and any stormwater drainage wells.*

***The plans submitted do not indicate the types of tenants to be included. Therefore, the above requirements are based on low-water-use tenants; i.e., those where wastewater generation is limited to employee restrooms/breakrooms. Should high-water-use tenants; e.g., food service, laundry, etc., be anticipated at this stage, details should be provided to the Water Authority thereby allowing requirements to be adjusted accordingly. Any future change-of-use applications which indicate an increase in water use will require an upgrade of wastewater treatment infrastructure which may include in-the-ground interceptors (for grease or oil-grit or lint) and/or an upgrade to an Aerobic Treatment Unit.***

*The developer is advised to contact [development.control@waterauthority.ky](mailto:development.control@waterauthority.ky) to discuss requirements to accommodate potential high-water use tenants.*

### **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 email dated January 11<sup>th</sup>, 2024, the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

*Caterpillar Lane is a public right of way over a private road with a width of 20ft. and is not deemed to be adequate for accommodating 2-way access for an industrial development. The NRA often fields phone calls complaints regarding on street parking blocking access to existing development. The NRA cautions the CPA in approving a development of this scale without proper access.*

*A large industrial development where access is inadequate to accommodate two-way commercial traffic will not be accepted; therefore, this development will not be endorsed by the NRA.*

**Department of Environmental Health**

*DEH has no objections to the proposed in principle.*

*This development requires (1) 8 cubic yard container with once per week servicing.*

*Enclosure dimensions:*

*length: 10 feet*

*Width: 10 feet*

*Height: 5.5 feet*

*Slab thickness: 0.5 feet*

*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](mailto:development.control@waterauthority.ky) for deep well details.*

**Department of Environment (26-7-23)**

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

**Fire Department**

Approved for Planning Permit Only 28 Dec 23

**APPLICANT'S LETTER**

*We are submitting this letter to explain the following circumstances of the Proposed Warehouse Building on Block 19E Parcel 153.*

*Although we respect the fact under the Industrial Development Zone of the Development and Planning Regulations (2021 Revision) Regulation 8 (7) (8) (b) (9) respectively Solid waste storage areas shall be setback a minimum of six feet from the adjacent property boundaries and shall be screened with vegetation and fencing; the minimum road setbacks shall be twenty feet and the minimum side and rear setbacks shall be six feet, unless otherwise specified by the Authority; After the 6<sup>th</sup> May, 2002, the minimum lot size in a Commercial zone or Industrial zone shall be twenty thousand square feet.*

*Due to the fact of the lot size situated in an industrial zone, site existing conditions and surroundings, driveway and parking's were designed as planned in such a way to make easy ingress and egress out of the property without creating any disruption of the neighborhood. The Garbage enclosure encroached half of the minimum 6 feet setback to allow for the Garbage truck required length and maneuvering. The building is set back 6 feet from the property through the site coverage exceeds 3% if the required 75% maximum We believed that it will not be materially detrimental to the adjacent property of to the public welfare.*

*We thank you and hoping that the Central Planning Authority looks favorably in granting our request.*



Caterpillar Lane



Google Map

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for a (7) unit warehouse; 10,121.11 sq. ft. to be located on Caterpillar Ln., George Town.

### **Zoning**

The property is zoned Heavy Industrial.

### **Specific Issues**

#### **1) Front Setback**

Regulation 8(8)(b) of the Development and Planning Regulations (2022 Revision) states “*the minimum road setbacks shall be 20’, unless otherwise specified by the Authority.*”

The applicant has proposed the warehouse to be **6’-0”** from the fronting road boundary a difference of **14’-0”**.

#### **2) Garbage setback**

Regulation 8(7) of the Development and Planning Regulations (2022 Revision) states “*solid waste storage areas shall be setback a minimum of 6’-0” from adjacent property boundaries and shall be screened with vegetation and fencing.*” The proposed garbage enclosure would be **0’-0”** from the boundary line a difference of **6’-0”**.

### 3) Site Coverage

Regulation 8(1) of The Development and Planning Regulations (2022 Revision) states “*In no case may the building plus the car parking area exceed 75% of the lot except in General Commercial zones where building plus parking area may occupy up to 90% of the lot.*” The proposed development will have a total combined site coverage of **77.19%** a difference of **2.19%** over the maximum allowable, the Authority should note the proposed building by itself covers a maximum of **47.35%** of the proposed site.

#### 2.8 **YARL HOLDINGS LTD. (National Builders Ltd.) Block 25B Parcel 225 (P23-0581) (\$3,000,000) (MW)**

Application for 2 commercial retail buildings, 1 directory sign with 54 signage slots; 26 tenant signs (30 sq. ft. each) & 6’ concrete boundary wall.

**Charles Russell declared a conflict and left the meeting room.**

#### **FACTS**

<i>Location</i>	Shamrock Rd., George Town
<i>Zoning</i>	<b>Neighbourhood Commercial</b>
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.8559 ac. (37,283.004 sq. ft.)
<i>Parcel size required</i>	20,000 sq. ft.
<i>Current use</i>	Vacant
<i>Proposed building size</i>	18,088.41 sq. ft.
<i>Total building site coverage</i>	25.09%
<i>Total site coverage</i>	70.6%
<i>Required parking</i>	61
<i>Proposed parking</i>	61

**Decision:** It was resolved to grant planning permission, **subject to the following conditions:**

Conditions (1-7) listed below shall be met *prior to the commencement of any site preparation works such as clearing, filling and grading* and before permit drawings can be submitted to the Department of Planning.

- 1) The applicant shall submit a revised site plan showing the deletion of the directory sign.
- 2) The applicant shall provide proof that the site boundaries have been set out on the ground by a licensed land surveyor.
- 3) If not already shown on the site plan, the applicant shall submit a site plan that shows the location, dimensions and **size** of the wastewater treatment system including the disposal system per the Water Authority's specifications.
- 4) If not already shown on the site plan, the applicant shall submit a site plan showing tire stops for the parking spaces and the parking area curbed and surfaced with asphalt or concrete.
- 5) The applicant shall provide proof that a Stormwater Management plan has been submitted to the National Roads Authority (NRA). **The applicant should liaise directly with the NRA in submitting the stormwater management plan.**
- 6) The applicant shall submit a landscape plan which shall be subject to review and approval by the Central Planning Authority. *It is suggested that the landscape plan be prepared following the recommendations of the Draft Cayman Islands Landscape Guidelines, found on the Planning Department's website ([www.planning.ky](http://www.planning.ky)) under About/Draft Policies.*
- 7) The applicant shall submit a construction operations plan to the satisfaction of the Director of Planning and must be prepared in accordance with the Central Planning Authority's Construction Operations Plan Guidelines - Template B *found on the Planning Department's website ([www.planning.ky](http://www.planning.ky)) under About/Draft Policies.*

In addition to Building Permit requirements, condition (8) listed below shall be met before a Building Permit can be issued.

- 8) The applicant shall submit the Stormwater Management plan required in condition 5) which has been designed in accordance with the requirements of the National Roads Authority (NRA) and approved by the Central Planning Authority.
- 9) The applicant is required to apply for a Permit from the Director of Planning. Construction shall not commence prior to the issuance of a Permit.
- 10) If during construction of the building insulating concrete forms (ICFs) are used, measures such as screens or other enclosures along with vacuuming shall be put in place to ensure that any shavings or foam waste is completely captured on site and does not impact the surrounding area
- 11) Prior to undertaking any sanding or breaking down of polystyrene as part of the construction process, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene

debris is completely captured on-site and does not impact the surrounding areas or pollute the adjacent Marine Protected Area offshore.

12) Unless specifically authorized otherwise in writing by the Central Planning Authority, the Development shall be carried out strictly in accordance with the approved plans.

13) The applicant shall obtain a Final Certificate (of Fitness for **Occupancy**) **prior to occupying the building(s)**.

If the existing grade level does not currently provide for it, the applicant is reminded that the finished floor level of all buildings should be at least five feet (5') above mean sea level.

**The applicant is reminded that they must receive all relevant approvals from all required agencies.**

Provision shall be made for the **removal of solid waste**, including **construction and demolition waste**, from the site on a regular basis during the construction period.

The applicant shall provide adequate number of **sanitary facilities during the construction stage**.

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) The Authority considered the application and determined that planning permission would be granted as the application complies with the Development and Planning Regulations (2022 Revision). Further in this regard, the use is a less intense form of development of that permitted in a General Commercial zone and it caters principally for the needs of persons resident in, or in the vicinity of, the zone per Regulation 13(1)(b).
- 3) The Authority is satisfied that the fence height is suitable for the use and is in keeping with the character of the area.
- 4) By deleting the directory sign, the proposal will be in compliance with the Authority's sign guidelines.

### **AGENCY COMMENTS**

The Authority received and considered comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment.

#### **Water Authority**

*The Water Authority's requirements for the proposed development are the same as per (Plan Ref: i010324-143107-75, P23-0581) and are as follows:*

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



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

- **The proposed development requires Aerobic Treatment Unit(s) with NSF/ANSI Standard 40 (or equivalent) certification that, when operated and maintained per manufacturer’s guidelines, the system achieves effluent quality of 30 mg/L Biochemical Oxygen Demand and 30 mg/L Total Suspended Solids. The proposed system shall have a treatment capacity of at least 2,263 US gallons per day (gpd), based on the following calculations.**

<b>BUILDING</b>	<b>UNITS/BLDG</b>	<b>GPD/UNIT</b>	<b>GPD</b>
Building A 1 <sup>st</sup> Floor	Unit A1-A7=4,059.66 sq.ft.	0.15gpd/sq.ft.	608.95
Building A 2 <sup>nd</sup> Floor	Unit A8-A14=4,059.65 sq.ft.	0.15gpd/sq.ft.	608.95
Building B 1 <sup>st</sup> Floor	Unit B1-B6=3,483.33 sq.ft.	0.15gpd/sq.ft.	522.50
Building B 2 <sup>nd</sup> Floor	Unit B7-B12=3,483.32 sq.ft.	0.15gpd/sq.ft.	522.50
<b>TOTAL</b>			<b>2,262.9</b>

- **Treated effluent from the ATU shall discharge to an effluent disposal well constructed by a licensed driller in strict accordance with the Authority’s standards. The minimum well casing diameter for this development shall be 6”.** Licensed drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.
- **To achieve gravity flow, treated effluent from the ATU must enter the disposal well at a minimum invert level of 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.

**Underground ATUs**

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

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

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

**Potential High-Water Use**

- ***The plans submitted do not indicate the types of tenants to be included. Therefore, the above requirements are based on low-water-use tenants; i.e., those where wastewater generation is limited to employee restrooms/breakrooms. Should high-water-use tenants; e.g., food service, laundry, etc., be anticipated at this stage, details should be provided to the Water Authority thereby allowing requirements to be adjusted accordingly. Any future change-of-use applications which indicate an increase in water use will require an upgrade of wastewater treatment infrastructure which may include in-the-ground interceptors (for grease or oil-grit or lint) and/or an upgrade to an Aerobic Treatment Unit.***

The developer is advised to contact [development.control@waterauthority.ky](mailto:development.control@waterauthority.ky) to discuss requirements to accommodate potential high-water use tenants.

### **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**

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

#### **General Issue**

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

#### **Road Capacity Issues**

The traffic demand to be generated by a two-storey retail building of 18,288 sq. ft. has been assessed in accordance with ITE Code 820 – Shopping Center. Thus, the assumed average trip rates per acre provided by the ITE for estimating the daily, AM and PM peak hour trips

are 4.73, 0.17 and 0.84 respectively. The anticipated traffic to be added to Shamrock Road is as follows:

<i>Expected Daily Trips</i>	<i>AM Peak Hour Total Traffic</i>	<i>AM Peak 48% In</i>	<i>AM Peak 52% Out</i>	<i>PM Peak Hour Total Traffic</i>	<i>PM Peak 44% In</i>	<i>PM Peak 56% Out</i>
<i>2,244</i>	<i>55</i>	<i>23</i>	<i>14</i>	<i>191</i>	<i>61</i>	<i>66</i>

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

***Access and Traffic Management Issues***

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

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

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

***Stormwater Management Issues***

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

- The applicant shall demonstrate, prior to the issuance of any Building Permits, that the Stormwater Management system is designed to embrace storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and ensure that surrounding properties and/or nearby roads are not subject to stormwater runoff from the subject site.
- The stormwater management plan shall include spot levels (existing and finished levels) with details of the overall runoff scheme. Please have the applicant provide this information prior to the issuance of a building permit.
- Construct a gentle ‘hump’ at the entrance/exit (along the entire width of each driveway) in order to prevent stormwater runoff from and onto Shamrock 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 (Per NRA specifications (available at: <https://www.caymanroads.com/upload/files/4/628e6599be2c9.pdf>) are to be networked, please have the applicant provide locations of such wells along with details of depth and diameter prior to the issuance of any Building Permits.*
- *Sidewalk details need to be provided per NRA specifications (available on our website at: <https://www.caymanroads.com/uyload/files/3/Sidewalk%20&%20Curbing%20Details.pdf>).*

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

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

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

## **Department of Environmental Health**

*Solid Waste Facility:*

*This development requires (1) 8 cubic yard container with once 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](mailto:development.control@waterauthority.ky) for deep well details.*

## **Department of Environment (24-1-24)**

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

**Site Overview**

*The site is man-modified, with historical aerial imagery showing the site having been cleared several times since 1958. The site is now covered in regrowth of now-mature vegetation (refer to Figure 1).*



*Figure 1: Aerial imagery of the site (outlined in blue) showing coverage of mature vegetation (Source: United Kingdom Hydrographic Office, 2021).*

### ***Advice to Applicant***

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

*The site is low lying and drainage is likely to be a concern. We recommend that the existing vegetation is retained within the site setbacks and landscaped areas as much as possible.*

### ***Advice to Central Planning Authority / Planning Department***

*Best management practices should be adhered to during construction to reduce impacts on the environment. In particular, control measures should be put in place to address pollution from expanded polystyrene (EPS) beads on construction sites, for example those used in*

*insulating concrete forms (ICF). Polystyrene is not biodegradable, and the EPS beads can be consumed by wildlife when it enters the food chain. These beads are very difficult to remove once they enter the environment and they do not naturally break down.*

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

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

## **Fire Department**

Approved for Planning Permit Only 05 Jan 24

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for (2) retail buildings (26) units; 18,288.41 sq. ft. with (1) totem sign with 54 signage slots; (26) 30 sq. ft. signs & 6' concrete boundary wall to be located on Hirst Rd., Bodden Town.

### **Zoning**

The property is zoned Neighbourhood Commercial.

### **Specific Issues**

#### **1) Zoning**

Neighbourhood 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 caters principally for the needs of persons resident in, or in the vicinity of, the zone (Regulation 13(1)(b) 2022 Revision)

The proposal includes (2) two story commercial retail buildings with a total of (26) retail spaces for a total of 18,288.41 sq. ft. The proposed would be bordered by an existing grocery store to the west and an existing commercial development to the east.

#### **2) Fence Height**

The CPA fence guideline 4.4.1 stipulates that *“In commercial, industrial and institutional zones, no part of a solid wall or fence should exceed 48 inches in height.”* The applicant has proposed a **6'-0"** high concrete boundary wall which would border the eastern and northern boundary. The wall would have a difference of **2'-0"** in height respectively.

### 3) Compliance to Sign Guidelines

The applicant is proposing (1) 13'6" directory sign with a total of (54) signage slots. In addition, the applicant has proposed (26) 30 sq. ft. tenant signs.

The Department refers to Section 5.2 of the Sign Guidelines 2014. Freestanding signs shall have a maximum size of 32 sq ft and a maximum height of 12 feet. The proposed directory sign is 94.5 sq ft in size and has a height of 13'6", both of which do not comply with the guidelines.

The guidelines state further - One fascia sign is permitted per tenant building frontage, size not to exceed 50% of tenant linear frontage (i.e. Tenant with a 30 foot frontage may have up to a 15 sq.ft. fascia sign). In this instance the tenant linear frontage is 15' therefore the tenant signs can be 7.5 sq ft. The applicant is proposing signs that are 30 sq ft.

## 2.9 CHARLES WATLER (Abernethy & Associates) Block 32B Parcel 386 (P22-1072) (\$250,000) (NP)

Application for a 26 lot subdivision (21 residential lots, 2 LPP and 3 road parcels).

### FACTS

<i>Location</i>	North of Shamrock Road & East of Walbridge Road, Lower Valley
<i>Zoning</i>	<b>Low Density Residential</b>
<i>Notification Results</i>	No objectors
<i>Parcel size</i>	8.46 acres
<i>Parcel size required</i>	10,000 sq. ft. for dwellings 25,000 sq. ft. for apartments
<i>Parcel width required</i>	80 feet for dwellings 100 feet for apartments
<i>Proposed lot sizes</i>	9,480 sq. ft. and above
<i>Proposed Lot Width</i>	2 less than 80 feet
<i>Current use</i>	Vacant

### BACKGROUND

September 30, 2020 (CPA/16/20; item 2.9) (P20-0557) – It was resolved to adjourn the application for the following reasons:

- 1) The applicant shall submit a revised plan showing:
  - a) Land for Public Purpose (LPP) not exceeding 5% of the gross area of the land and it cannot be located on the remainder parcel.

- b) The deletion of the two easements leading to Shamrock Road and situated on Block 32B Parcels 120 and 121.

January 6, 2021 (CPA/01/21; item 2.6) - It was resolved to adjourn the application for the following reasons:

- 1) The applicant shall submit a revised plan showing:
  - a) Land for Public Purpose (LPP) in the amount of 5% of the gross area of the land located within the area which contains lots 1 through 7.
  - b) A 'T' turnaround between lots 1 and 9.

**Decision:** It was resolved to grant planning permission, subject to the following conditions:

- 1) Prior to the commencement of any site works such as filling, grading and road construction (with the exception of minor land clearing needed to establish site levels for the preparation of a stormwater management plan), the applicant shall submit:
  - a) Specifications of any proposed underground utilities; including location, type of utilities, and trench dimensions.
  - b) A stormwater management plan prepared in accordance with the requirements of the Managing Director, NRA and approved by the Central Planning Authority. The plan shall be designed to embrace storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and should include, but not be limited to, the location of all drainage facilities and general grading details of the parcels (roads included). In general, the entire site shall be graded in such a manner that stormwater runoff is no more than that which occurred during predevelopment conditions along private boundaries with any excess runoff directed to one central drainage facility or a series of facilities.
- 2) Prior to the subdivision plan being finalized, the following conditions shall be satisfied:
  - a) All underground utilities shall be inspected and approved by the relevant agencies prior to the utilities being buried.
  - b) The approved stormwater management system shall be installed on site.
  - c) The final subdivision plan shall indicate a vehicular easement over the subdivision access road in favour of each lot. The final plan must be accompanied with the requisite grant of easement forms detailing the easements to be registered.
  - d) The access road (s) abutting the proposed lots, **as well as lot 25C**, shall be constructed with asphalt and approved by the Central Planning Authority prior to the lots being registered. The applicant shall liaise with the Managing Director, National Roads Authority (NRA), at predetermined stages of road construction to ensure compliance with the requisite standards. Failure to do so may render the project unacceptable. Please be advised that the road base shall be constructed to National Roads Authority



(NRA) minimum design and construction specifications for subdivision roads. The NRA shall inspect and certify road base construction prior to road surfacing activities.

- e) Proposed lot 1 shall gain access from the internal subdivision road, not Shamrock Road.
- f) The applicant shall provide water infrastructure for the entire sub-division. The developer shall submit plans for the water supply system for approval by the Water Authority. The water supply system shall be installed to the Authority's specifications, under the Authority's supervision. Copies of these specifications are available at the Water Authority's office on Red Gate Road.
- g) The applicant shall request to have the sub-division connected to the Water Authority's public water system. This request will be acted upon after the pipelines on the sub-division have been installed in accordance with the WAC specifications and have passed all specified tests.
- h) There shall be no land clearing, excavation, filling or development of the resultant subdivided parcels without planning permission for such works being granted.

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) With the exception of the size of three lots and the widths of two other lots, which are addressed below, the application complies with the Development and Planning Regulations (2022 Revision).
- 3) Three of the proposed lots do not comply with the minimum required lot size and two other lots do not comply with the minimum required lot width per Regulations 9(8)(d) and (g) of the Development and Planning Regulations (2022 Revision). The Authority is of the opinion that pursuant to Regulation 8(13)(b) there is sufficient reason and exceptional circumstance to allow the lesser lot sizes and widths as follows:
  - a) The characteristics of the proposed development are consistent with the character of the surrounding area; and
  - b) 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.
- 4) The Authority is satisfied with the amount of LPP being provided and its distribution through the subdivision.

### **AGENCY COMMENTS**

The Authority received and considered comments from the Department of Environment, Water Authority and National Roads Authority.

## **Department of Environment**

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

*The DoE confirms that we have limited environmental concerns to the proposed modification of the subdivision at this time. The application site is predominately man-modified and is of limited ecological value, and the application forms a modification to the subdivision design.*

## **Water Authority Cayman**

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

### *Wastewater Treatment*

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

### *Stormwater Management*

*This development is located over the Lower Valley water lens or within the 500m buffer zone of the lens. In order to protect the fresh water lens, the Water Authority requests that stormwater drainage wells are drilled to a maximum depth of 60 ft. instead of the standard depth of 100ft as required by the NRA.*

### *Water Supply*

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

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

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

## **National Roads Authority**

### **DECEMBER 21, 2023 COMMENT**

*As per your memo dated December 14th 2023 the NRA has approved the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

*The NRA has no objections or concerns **regarding the above proposed modification***

### **MARCH 7, 2023 COMMENT**

*As per your memo dated December 15th 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 NRA has a planned seventy (70) feet wide corridor that will connect the current terminal of the East-West Arterial roadway at Woodland Drive to the Agricola Drive / Shamrock Road intersection as illustrated below. The NRA asks that the applicant adjusts his subdivision plan accordingly.*



*The applicant's agent can liaise with the NRA to obtain the coordinates of the planned road corridor. Gazettal instructions for the planned roadway will be forwarded in the near future.*

#### *Internal Access*

*The NRA advises the CPA to inform the applicant that access to Lot 1 shall be made from the internal access road and not from Shamrock Road. The reasons for this are three-fold,*

- 1. Driveways along collector and arterial roads need to have a degree of separation as is set within the NRA Subdivision Specifications;*
- 2. The sight line specifications for a 40MPH also need to be adhered to; and*
- 3. As Shamrock Road is a primary arterial road, the number of access points need to be kept at a minimum so as to reduce the amount of side friction onto the road which in turn would help with keeping traffic moving in the mornings along the main road.*

*The NRA suggests the applicant gain this internal access either by Loganberry Lane and/or Wildflower Lane, per his previous planning application.*

*The proposed intersection at Lots 7/17/20 needs to be adjusted to meet NRA Subdivisions specifications which states that,*

*'intersections shall not be diametrically opposed and where possible need to be offset'*

#### **4.6.6 ACCESS ROAD JUNCTIONS:**

- Access road junctions within the subdivision shall be offset by a minimum of two hundred feet (200) and;*
- Intersections shall not be diametrically opposed.*

#### *Stormwater Management Issues*

*Please note that this subdivision sits over the Lower Valley freshwater lens. In order to protect the fresh water lens, the Water Authority requests that stormwater drainage wells (if used) are drilled to a maximum depth of 60ft instead of the standard depth of 100ft as required by the NRA.*

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

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

*The applicant is encouraged to consider stormwater management techniques other than deep wells, and to contact the NRA for advice on these alternative control measures.*

#### *Infrastructure Issues*

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

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

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

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

*to HMA surfacing activities.*

*All internal road way curves horizontal align shall be no less than 46 feet centreline radius. This requirement ensures that the minimum vehicle sweeps for a standard garbage and/or fire truck can be accommodated by the site layout.*

## **APPLICANT'S LETTERS**

### **Letter #1**

*Please find attached the re-design of the subdivision for the above project.*

*The re-design came after talks with NRA and their intention to put a connecting road through the parcel. We have re-designed around what was provided by NRA.*

*There are an additional 15 lots that will need to be invoiced for the project.*

*Please do not hesitate to contact me if you have any questions or require additional information.*

### **Letter #2**

*Enclosed please find the re-design of the subdivision to meet the NRA requests. Due to the new location of the NRA road, lots 20 through 22 are slightly smaller than the required 10,000 Sq. Ft. My client has gone to great expense to accommodate the NRA with their road design. For this we are asking for a variance on the lot size for these lots under the Planning Regulation 8(13) (b) (iii) to accommodate this.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The subject property is located in Lower Valley, north of Shamrock Road and east of Walbridge Road.

The property is currently vacant and the proposal is to create 21 new residential lots, 2 parcels (7,580 square feet) as Lands for Public Purposes, and 3 road parcels.

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

### **Zoning**

The property is zoned Low Density Residential.

### **Specific Issues**

#### **1) LPP Area (2.1% vs 5%)**

The subject parcel consists of 8.46 acres or 368,517 square feet.

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

Based upon the subject lot area, a minimum 18,425.9 square feet can be requested.

The applicant is proposing two LPP blocks totalling 7,580 square feet (2.1 %).

There is a difference of 2.9 % or 10,845.9 square feet that the Authority should consider as part of the deliberations.

#### **2) Disjointed nature of LPP parcels (2)**

It is noted that there are two separate and distinct LPP parcels proposed.

This may affect the ability to develop the LPP parcels in the future for traditional park uses.

#### **3) Lot width (2 lots less than 80')**

Regulation 9(8)(g) requires a minimum lot width of 80 feet in the LDR zone.

Proposed lots 14 and 15 are not able to satisfy this requirement due to their location on a turn around.

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

#### **4) Lot size (3 lots at 9,480 sq ft vs 10,000 sq ft)**

Regulation 9(8)(d) requires a minimum lot area of 10,000 square feet in the LDR zone.

Proposed lots 20, 21, & 22 are not able to satisfy this requirement.

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

## **2.10 ALBERT THACKER (Tropical Architectural Group Ltd.) Block 28C Parcels 420 & 421 (P23-1030) (\$1,241,400) (MW)**

Modification to mixed use building; add third floor storage units; revise floor layout & elevations, revise parking, relocate WWTP, add 10' retaining wall & (6) signs.

## **FACTS**

<i>Location</i>	Hirst Rd., Bodden Town
<i>Zoning</i>	<b>Neighbourhood Commercial</b>
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.6621 ac. (28,841.076 sq. ft.)
<i>Parcel size required</i>	20,000 sq. ft.
<i>Current use</i>	Vacant
<i>Proposed building size</i>	28,039 sq. ft.
<i>Total building site coverage</i>	24.7%
<i>Required parking</i>	39
<i>Proposed parking</i>	40

## **BACKGROUND**

July 6, 2022 (CPA/17/22; Item 2.5) – approval granted for a two storey, mixed use building with clinic, (4) apartments & (3) retail units.

**Decision:** It was resolved to adjourn the application and invite the applicant to appear before the Authority to discuss concerns regarding the building height and deficient setbacks.

## **AGENCY COMMENTS**

The Authority received and considered comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment.

### **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 proposed are as follows:*

### **Wastewater Treatment and Disposal**

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

- *The proposed development **requires Aerobic Treatment Unit(s) with NSF/ANSI Standard 40 (or equivalent) certification** that, when operated and maintained per manufacturer's guidelines, the system achieves effluent quality of 30 mg/L Biochemical Oxygen Demand and 30 mg/L Total Suspended Solids. **The proposed system shall have a treatment capacity of at least 3,979 US gallons per day (gpd)**, based on the following calculations.*

<b>BUILDING</b>	<b>UNITS/BLDG</b>	<b>GPD/UNIT</b>	<b>GPD</b>
Ground Floor	<b>Clinic</b> 12 x Practitioner Chairs	250gpd/Chair	3,000
	1 x Retail Unit ~939 sq. ft.	939 x 0.15 (retail factor)	140.85
Second Floor	4 x 1-Bed Units	150gpd/1-Bed	600
	2 x Retail Units ~1,568 sq. ft.	1,568 x 0.15 (retail factor)	237.9
Third Floor	18 x Storage Units (No water/wastewater fixtures)	0	0
<b>TOTAL</b>			<b>3,978.75 GPD</b>

- **Treated effluent from the ATU shall discharge to an effluent disposal well constructed by a licensed driller in strict accordance with the Authority’s standards. The minimum well casing diameter for this development shall be 6’’. Licensed drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.**
- **To achieve gravity flow, treated effluent from the ATU must enter the disposal well at a minimum invert level of 5’0” 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.**

**Potential High-Water Use**

**With the exception of the Dental Clinic, the plans submitted do not indicate the types of tenants to be included. Therefore, with the exception of the Dental Clinic the above requirements are based on low-water-use tenants; i.e., those where wastewater generation is limited to employee restrooms/breakrooms. Should high-water-use tenants; e.g., food service, laundry, etc., be anticipated at this stage, details should be provided to the Water Authority thereby allowing requirements to be adjusted accordingly. Any future change-of-use applications which indicate an increase in water use will require an upgrade of wastewater treatment infrastructure which may include in-the-ground interceptors (for grease or oil-grit or lint) and/or an upgrade to an Aerobic Treatment Unit.**

The developer is advised to contact [development.control@waterauthority.ky](mailto:development.control@waterauthority.ky) to discuss requirements to accommodate potential high-water use tenants.

**Elevator Installation**

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

**Stormwater Management**



This development is located over the **Lower Valley fresh water lens** or within the 500m buffer zone of the lens. In order to protect the fresh water lens, the Water Authority requests that stormwater drainage wells are drilled to a **maximum depth of 60ft.** instead of the standard depth of 100ft as required by the NRA.

**Water Supply:**

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

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

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

**National Roads Authority**

As per your memo dated January 9<sup>th</sup>, 2024 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.

**Road Capacity Issues**

The traffic demand to be generated by a Mix-Use Development of Four (4) Residential Units and 9,842 sq. ft. General Office Development has been assessed in accordance with ITE Code 220 – Apartment and 710 – General Office. Thus, the assumed average trip rates anticipated traffic to be added onto Sutton Road, Edison Drive & Hirst Road is as follows:

Dev’t Type	Expected Daily Trip	AM Peak Hour Total Traffic	AM Peak In	AM Peak Out	PM Peak Hour Total Traffic	PM Peak In	PM Peak Out
Residential	27	2	0	2	2	2	1
Commercial	225	30	26	4	89	15	74

<b>Total</b>	<b>252</b>	<b>32</b>	<b>26</b>	<b>6</b>	<b>91</b>	<b>17</b>	<b>75</b>
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*Based on these estimates, the impact of the proposed development onto Sutton Road, Edison Drive & Hirst Road is considered to be moderate.*

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

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

*A six (6) foot sidewalk shall be constructed on Sutton Road, Edison Drive & Hirst Road, within the property boundary, to NRA standards.*

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

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

*The applicant is encouraged to implement state-of-the-art techniques that manage stormwater runoff **within the subject parcel** and retain existing drainage characteristics of the site as much as if 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 Sutton Road, Edison Drive & Hirst 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.

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

## **Department of Environmental Health**

### **Solid Waste Facility:**

This development requires (1) 8 cubic yard container with three times per week servicing.

**Table 1: Specifications for Onsite Solid Waste Enclosures**

<b>Container size (yd<sup>3</sup>)</b>	<b>Width (ft)</b>	<b>Depth (ft)</b>	<b>Height (ft)</b>	<b>Slab Thickness (ft)</b>	<b>Requirements</b>
8	10	10	5.5	0.5	Water (hose bib), drain, Effluent Disposal well; guard rails

### **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](mailto:development.control@waterauthority.ky) for deep well details.

## **Department of Environment (17-1-24)**

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).

### **Advice to the Applicant**

The application site is man-modified and of limited ecological value. The DoE recommends that the applicant retains mature trees within the parcels for shade and plants and

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

*The applicant may also wish to consider the use of porous surfaces in the areas of hardstanding, e.g. car parks, to allow rainwater infiltration and therefore help to manage the impacts of stormwater run-off.*

*In addition, the DoE also recommends that, wherever possible, sustainable design features are included in projects such as this one. Especially given the target of 70% of the islands' energy generation to be renewably sourced by the year 2037 (Cayman Islands National Energy Policy 2017-2037), we strongly recommend the incorporation of renewable energy installations. Photovoltaic solar panels in particular could be installed on suitable roof spaces or over the proposed parking spaces and rainwater collection could be used for irrigation.*

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

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

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

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

### **APPLICANT'S LETTER**

*Further to the application submitted in relation to the above referenced Project, we hereby request a setback variance which requires a minimum of 20' road setback and a minimum of 6' rear and side setback per Planning Regulation 8(8)(b).*

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

- (1) Under Regulation 8 (13)(b)(i), the characteristics of the proposed development are consistent with the character of the surrounding area; Regulation 8 (13)(b)(ii), unusual terrain characteristics limit the site's development potential; or 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 neighbourhood, or to the public welfare :***

*The initial application was for a two-storey mixed-use building, which received planning approval on August 5, 2022. However, recognizing the growing demand for storage space and with the aim of fully optimizing the site's potential, our client has decided to incorporate additional storage on the top floor (Third Floor).*

*Integrating these storages necessitates additional parking space, presenting a challenge given the limited space on the property due to its irregular shape and being surrounded by a road on all three sides. It's important to note that the main building adheres to setback regulations; however, the sewage treatment plant slightly exceeds the setback. The sewage treatment plant is situated approximately 3 feet away from the side boundary adjacent to 28C 422 and 8 feet 4 inches away from the road adjacent to Hirst Road. Despite this, the sewage treatment plant will be positioned underground, ensuring it remains unseen.*

*The original location of the sewage treatment plant, as approved in the previous application, remains in the same area. However, a slight adjustment is required, shifting it by a few feet to accommodate the necessary parking spaces for the additional storages. It's crucial to highlight that the proposed project does not seek any variances, aside from the adjustment to the sewage treatment plant. The owner is committed to making the necessary adjustments, but given the site's constraints, there is no viable alternative location for the sewage treatment plant.*

*If you require additional information or further clarification, please don't hesitate to contact us at the numbers & e-mail below. Thank you and God bless.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for a modification to mixed use building; add third floor storage units; 8,276 sq. ft., revise floor layout & elevations, revise parking, relocate WWTP, add 10' retaining wall & (6) signs to be located on Hirst Rd., Bodden Town.

### **Zoning**

The property is zoned Neighbourhood Commercial..

### **Specific Issues**

#### **1) Building height**

The height of the building is 39' with the exception of the portion of the building elevation with the ramp to the basement parking. The height at that portion of the building is 49'9". Regulation 13(7)(a) states that maximum height of a building in the NC zone is 40'.

#### **2) Roadside Setback**

Regulation 8(8)(b) of the Development and Planning Regulations (2022 Revision) states "the minimum road setbacks shall be 20', unless otherwise specified by the Authority."

The applicant has relocated the previously approved WWTP to **8'-10"** from the fronting road boundary, a difference of **11'-2"**.

**3) Side setback**

Regulation 8(8)(a) of the Development and Planning Regulations (2022 Revision) states “*the maximum density and minimum setbacks shall be at the discretion of the Authority.*” The applicant has relocated the previously approved WWTP from the approved 6’ boundary setback to a distance of **3'-0"** from the adjoining parcel a difference of **3'-0"**.

**4) Fence Height**

The CPA fence guideline 4.4.3 stipulates that “*In commercial, industrial and institutional zones, when a semi-transparent wall or fence is used in combination with a solid wall or fence, the solid portion of the wall or fence must not exceed 32 inches. If the solid portion exceeds 32 inches, the wall or fence will be classified as a solid wall or fence, and the total height will be limited to 48 inches.*” The applicant has proposed a **10'-0"** high retaining wall which will have 6'-0" high concrete base wall and topped with a 4'-0" high aluminium railing. The wall will be located along the western and southern property boundaries. In addition the applicant has proposed to increase the previously approved 4’ high boundary fence along the northern boundary to **6'-0"**.

**2.11 ANTHONY LIDDLE (BDCL Architects) Block 10E Parcel 11 (P23-0606) (\$20,000) (NP)**

Application for a gate

**FACTS**

<i>Location</i>	Sundown Close in West Bay
<i>Zoning</i>	<b>Hotel/Tourism</b>
<i>Notification result</i>	Not Applicable
<i>Current use</i>	House

**Decision:** It was resolved to adjourn the application and invite the applicant to appear before the Authority to discuss the comments raised by the Public Lands Commission.

**AGENCY COMMENTS**

The Authority received and considered comments from the Department of Environment, Fire Department, National Roads Authority, Department of Environmental Health and the Public Lands Commission.

## **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 environmental concerns with the proposed development at this time.*

*We do recommend that the Planning Department consults with the Public Lands Commission as the plans indicate that the proposed development will block access along the former West Bay Road, which may have prescriptive rights.*

## **Fire Department**

*The Fire Department has no objection to the proposal subject to the installation of a Siren Operated System. The drawings have been modified to include same.*

## **National Roads Authority**

*As per your memo dated August 25th, 2023 the NRA has reviewed the above-mentioned planning*

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

*The NRA is concerned with the proposed fence/wall being constructed at 16ft. If this is a single-family dwelling house this would be acceptable to the NRA, however for a multifamily dwelling, the fence/wall shall be a minimum of twenty-four (24) ft. wide.*

## **Department of Environmental Health**

*DEH has do objections to the proposed in principle.*

## **Public Lands Commission**

*The Public Lands Commission writes in reference to the subject application submitted by ANTHONY LIDDLE to the Central Planning Authority regarding the proposed Fence and Relocation of the Bin Area at Coral Reef Gate - Block 10E Parcel 11 West Bay Road.*

*The Public Lands Commission has been established under the Public Lands Act (2020 Revision) and one of its mandates under section 5 (b) is:*

*“to protect the right of access to and use of public land by members of the public, including the enforcement of public rights of way over private lands.”*

*Subsequent to the Public Lands Commission review and investigation of the matter, the following has been noted:*

1. *The Beach Access Report identifies a public right of way to the beach acquired by prescription under section 4 of the Prescription Act (2018 Revision), known as SMB 41 over the southern boundary of Block 10E Parcel 54.*
2. *Beach Access SMB 41 is one among the unregistered accesses which the Commission seeks to have recognised. Any obstruction or blockage of this right of way would therefore, cause the PLC to seek recognition through the courts under Section 9 of the Prescription Act.*

*After due consideration The Public Lands Commission objects to the proposed application, unless the route of the existing prescriptive public right of way is unaffected / unimpeded.*

*While the Central Planning Authority (CPA) has the power to consider and approve amendments to conditions of planning approval, neither the CPA nor any other body in the Cayman Islands Government has the power to modify or extinguish a registered public right of way. A registered public right of way can only be modified or extinguished via an application to the Grand Court in accordance with Section 98D of the Registered Land Act (2018 Revision).*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The subject parcel is located on Sundown Close in West Bay.

The property contains a dwelling.

The applicant is seeking planning permission for a 4 foot high gate across a portion of the former West Bay Road that is no longer used by vehicles.

### **Zoning**

The property is zoned Hotel/Tourism.

## **2.12 KIOKO NZOKA MUASYA (Abernethy & Associates) Block 27B Parcel 131 (P23-1161) (\$5,000) (NP)**

Application for a 40 lot subdivision (38 residential lots, 2 LPP)

### **FACTS**

<i>Location</i>	Brushwood Way area, Savannah
<i>Zoning</i>	<b>LDR</b>
<i>Notification Results</i>	No objectors
<i>Parcel size</i>	12.7 acres
<i>Parcel size required</i>	10,000 sq. ft. for dwellings 25,000 sq. ft. for apartments



<i>Parcel width required</i>	80 feet for dwellings 100 feet for apartments
<i>Proposed lot sizes</i>	10,110 sq. ft. to 65,580 sq. ft.
<i>Proposed lot widths</i>	74'9" to 108'
<i>Current use</i>	Vacant

**BACKGROUND**

September 16, 2020 (CPA/15/20; item 2.1 – Approval granted for a 42 lot subdivision. This subdivision created the road parcel for the current proposed 40 lot subdivision.

**Decision:** It was resolved to grant planning permission, subject to the following conditions:

- 3) Prior to the commencement of any site works such as filling, grading and road construction (with the exception of minor land clearing needed to establish site levels for the preparation of a stormwater management plan), the applicant shall submit:
  - c) Specifications of any proposed underground utilities; including location, type of utilities, and trench dimensions.
  - d) A stormwater management plan prepared in accordance with the requirements of the Managing Director, NRA and approved by the Central Planning Authority. The plan shall be designed to embrace storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and should include, but not be limited to, the location of all drainage facilities and general grading details of the parcels (roads included). In general, the entire site shall be graded in such a manner that stormwater runoff is no more than that which occurred during predevelopment conditions along private boundaries with any excess runoff directed to one central drainage facility or a series of facilities.
- 4) Prior to the subdivision plan being finalized, the following conditions shall be satisfied:
  - a) All underground utilities shall be inspected and approved by the relevant agencies prior to the utilities being buried.
  - b) The approved stormwater management system shall be installed on site.
  - c) The final subdivision plan shall indicate a vehicular easement over the subdivision access road in favour of each lot. The final plan must be accompanied with the requisite grant of easement forms detailing the easements to be registered.
  - d) The access road (s) abutting the proposed lots shall have a minimum of a 30' wide demarcated road parcel and shall be constructed with asphalt and approved by the Central Planning Authority prior to the lots being registered. The applicant shall liaise with the Managing Director, National Roads Authority (NRA), at predetermined stages of road construction to ensure compliance with the requisite standards. Failure to do so may render the project unacceptable. Please be advised that the road base shall be

constructed to National Roads Authority (NRA) minimum design and construction specifications for subdivision roads. The NRA shall inspect and certify road base construction prior to road surfacing activities.

- e) The applicant shall provide water infrastructure for the entire sub-division. The developer shall submit plans for the water supply system for approval by the Water Authority. The water supply system shall be installed to the Authority's specifications, under the Authority's supervision. Copies of these specifications are available at the Water Authority's office on Red Gate Road.
- f) The applicant shall request to have the sub-division connected to the Water Authority's public water system. This request will be acted upon after the pipelines on the sub-division have been installed in accordance with the WAC specifications and have passed all specified tests.
- g) There shall be no land clearing, excavation, filling or development of the resultant subdivided parcels without planning permission for such works being granted.
- h) All mangrove vegetation shall be retained in accordance with the National Conservation Council's Species Conservation Plan for Mangroves (2020).
- i) The surveyor's final drawing **shall include the surveyed dimensions of all lots** and shall be submitted to the Director of Planning for approval prior to the survey being registered.

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) With the exception of the widths of two lots, which is addressed below, the application complies with the Development and Planning Regulations (2022 Revision).
- 3) Two of the proposed lots do not comply with the minimum required lot width per Regulation 9(8)(g) of the Development and Planning Regulations (2022 Revision). The Authority is of the opinion that pursuant to Regulation 8(13)(b) there is sufficient reason and exceptional circumstance to allow the lesser lot widths as follows:
  - a) The characteristics of the proposed development are consistent with the character of the surrounding area;
  - b) The two lots are typical of most subdivision design where there are road corners and turnarounds; and
  - c) 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.

## **AGENCY COMMENTS**

The Authority received and considered comments from the Department of Environment, National Roads Authority and the Water Authority.

### **Water Authority Cayman**

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

#### **Wastewater Treatment**

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

#### **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.*

### **Department of Environment – 17 January 2024**

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

#### **Advice to Applicant**

*As seen in Figure 1 below, the application site contains seasonally and tidally flooded mangrove forests. The applicant is reminded that mangroves are Schedule 1, Part 2 Protected Species under the National Conservation Act (NCA) with an adopted Conservation Plan. It is an offence to remove mangroves unless permission is explicitly sought to remove them either through the granting and implementation of planning permission or a National Conservation Council Section 20 permit. The Mangrove Species Conservation Plan can be downloaded at*

the following link: <https://conservation.ky/wp-content/uploads/2021/01/Species-Conservation-Plan-for-Mangroves-FINAL.pdf>.



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

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

*Mangroves provide natural infrastructure protection by preventing erosion and absorbing storm surge impacts during extreme weather events such as hurricanes. They are also an important natural asset for the Cayman Islands and form part of Cayman's Natural Capital Accounts. Mangrove wetlands are extremely effective at sequestering carbon from the atmosphere and serve as carbon sinks. The large-scale removal of significant tracts of mangrove habitat reduces the Island's natural carbon sequestration potential and the*

*removal of mature vegetation and de-mucking of mangrove sites releases captured carbon into the atmosphere. The removal of mangrove habitats reduces the extent and value of this natural asset and removes the ecological services the habitat currently provides.*

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

*We strongly recommend that proposed areas of LPP are retained in a natural state as they contain both seasonally and tidally flooded mangroves. Retaining these mangroves would reduce the cost of filling as this area is very low lying, aid with on-site drainage, and provide storm protection for any future developments on the resultant parcels.*

#### **Advice to the Central Planning Authority or Planning Department**

*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:*

- 1. There shall be no land clearing, excavation, filling or development of the resultant subdivided parcels without planning permission for such works being granted.*
- 2. All mangrove vegetation shall be retained in accordance with the National Conservation Council's Species Conservation Plan for Mangroves (2020).*

#### **National Roads Authority**

*As per your memo dated January 15<sup>th</sup>, 2024 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

##### *General Issue*

- A comprehensive traffic calming plan will be required for a subdivision of this scale, where traffic controls are in place to mitigate speeding and other unwanted behaviours on the road.*
- The NRA would also like to advise the CPA that there is currently another application for P20-0447/P23-0734 that have been approved (CPA/15/20; Item 2.1), which stipulates a 30' access road abutting Block 27B132 be constructed with asphalt prior to lots being registered. It has been noted that direct access to the proposed subdivision on 27B131 will be utilized by this future road.*

##### *Stormwater Management Issues*

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

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

#### *Infrastructure Issues*

*The NRA advises the CPA to require the developer' to provide for signage (stop signs, etc.), street lighting and any other traffic calming measures on the proposed roads of the subdivision. Once the roadway has been taken over as a public road, the NRA can then assume that responsibility. This site will need a stop sign with stop bars at the junction of the proposed 30ft. access road.*

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

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

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

*All internal roadways (horizontal alignment) shall be no less than 46 feet centreline radius. This requirement ensures that the minimum vehicle sweeps for a standard garbage and/or fire truck can be accommodated by the site layout.*

## **APPLICANT'S LETTERS**

### **NRA Response**

*With response to the NRA comments dated February 13, 2024, we have uploaded the approved SWMP for the road design on Block 27B Parcel 133, Project P23-0734. This will be a shared road between the 2 projects. When the project for 27B 132 was approved, roundabouts were introduced to create traffic calming as requested by NRA and the CPA at the time.*

### **Variance Letter**

*The application site is located in a Low Density Residential zone. Consequently, as members are aware, Regulation 9(8)(g) is applicable whereby lot widths are prescribed for house/duplexes at a minimum of 80ft and for apartment lots a minimum of 100ft.*

*The proposed subdivision will be accessed from the east by way of an adjacent subdivision which contains an approved road lot.*

### ***Variance 1 – Lot 2: lot width 42.4' vs. 80'***

*The proposed house lot 2 has a width of 42.4' along the western boundary, deviating from the prescribed 80' in the Regulations. The provision of Land for Public Purpose (LPP) (lot 1) across the subdivision frontage to the south has impacted the width of lot 2. However, adequate lot widths are achieved for the remaining lots.*

*Through the provisions of Regulation 8(13) we invite members to consider granting a variance for the substandard width of lot 2. Considering the resultant lot size being 16,630 sf adequate developable land is available for future development. The LPP strip is proposed across the subdivision frontage based on discussions with NRA, enabling creation of a future road with adequate width to service the subdivisions. We hope members agree the proposed lot width will not be materially detrimental to persons residing now or in the future in the area or on adjacent property.*

### ***Variance 2 – Lot 39: subdivision road frontage 74.9'***

*The Department of Planning has noted a road frontage of 74.9' as non-compliant with the Regulations, with the measurement taken from a future survey marker for the adjacent subdivision road lot. It is our understanding when considering lot widths in residential zones, the Regulations do not explicitly specify road frontage width requirements; rather, the assessment encompasses the entirety of the proposed lot which in this case has a straight measurement of 656.9'.*

*We acknowledge the Department of Planning's assessment; however, we would like to highlight our interpretation of the Regulations.*

*Under Regulation 8(13) we wish members to consider granting a variance for this measurement on lot 39 noting an adequate width for access and the provision of a 6' wide pedestrian right of way to the designated LPP in lot 40. We do not believe this variance for lot 39 would be detrimental to residents in the area or future residents on adjacent lots and hope members consider this request favourably.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The subject property is located in Savannah, in the vicinity of Brushwood Way

The subject property is currently vacant and the proposal is to create 38 residential lots and two parcels (27,660 square feet) as Lands for Public Purposes.

Proposed residential lot sizes range from 10,110 square feet to 65,580 square feet.

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

### **Zoning**

The property is zoned Low Density Residential.

### **Specific Issue**

#### **1) Lot width – lot 39 (74'9" vs 80')**

Regulation 9(8)(g) requires a minimum lot width of 80 feet for single detached dwellings.

In this instance, lot 39 has a proposed lot width of 74'9".

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

#### **2) Lot width – lot 2 (42'4" vs 80')**

Regulation 9(8)(g) requires a minimum lot width of 80 feet for single detached dwellings.

In this instance, lot 2 has a proposed lot width of 42'4".

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

## **2.13 ANN WORKS (John Doak Architecture) Block 33B Parcel 109 (P23-0676) (\$250,000) (MW)**

Application for a second floor addition to garage for guest quarters & modification to deck.

### **FACTS**

<i>Location</i>	Rum Point Dr., North Side
<i>Zoning</i>	<b>Low Density Residential</b>
<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>	Existing residence & garage.
<i>Proposed building size</i>	726 sq. ft.
<i>Total building site coverage</i>	11.75%
<i>Required parking</i>	2
<i>Proposed parking</i>	6

### **BACKGROUND**

November 12, 2015 – Modification to increase floor area; 40 sq. ft. – the application was considered and it was resolved to grant planning permission.

**Decision:** It was resolved to grant planning permission, subject to the following conditions: Condition (1) listed below shall be met before permit drawings can be submitted to the Department of Planning.

- 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 is required to apply for a Permit from the Director of Planning. Construction shall not commence prior to the issuance of a Permit.
- 3) If during construction of the building insulating concrete forms (ICFs) are used, measures such as screens or other enclosures along with vacuuming shall be put in place to ensure that any shavings or foam waste is completely captured on site and does not impact the surrounding area.
- 4) Prior to undertaking any sanding or breaking down of polystyrene as part of the construction process, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas or pollute the adjacent Marine Protected Area offshore.
- 5) All construction materials shall be stockpiled at a minimum of 20 feet from the canal edge to reduce the possibility of run-off washing material and debris into the canal causing turbidity and impacting water quality.
- 6) The construction area shall be fully enclosed with silt screens with a 4-foot minimum skirt depth to contain any sedimentation or debris arising from the proposed additions. The silt screens shall remain in place until the water contained inside the screens has cleared to the same appearance as the water outside of the screens.

- 7) Unless specifically authorized otherwise in writing by the Central Planning Authority, the Development shall be carried out strictly in accordance with the approved plans.
- 8) The applicant shall obtain a Final Certificate (of Fitness for **Occupancy**) **prior to occupying the building(s)**.

If the existing grade level does not currently provide for it, the applicant is reminded that the finished floor level of all buildings should be at least seven feet (7') above mean sea level.

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) With the exception of the canal setback and side setbacks, which are addressed below, the application complies with the Development and Planning Regulations (2022 Revision).
- 3) The proposed application does not comply with the minimum required side setbacks per Regulation 9(8)(j) of the Development and Planning Regulations (2022 Revision). The Authority is of the opinion that pursuant to Regulation 8(13)(b) there is sufficient reason and exceptional circumstance to allow the lesser setbacks as follows:
  - a) The characteristics of the proposed development are consistent with the character of the surrounding area;
  - b) 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; and
  - c) The proposal is consistent with the provisions of Section 2.6 of The Development Plan 1997
- 3) The proposed development does not comply with the minimum required setback from the canal per Regulation 8(10)(ea) of the Development and Planning Regulations (2022 Revision). Pursuant to Regulation 8(11), the Authority may allow a lesser setback having regard to:
  - a) the elevation of the property and its environs;
  - b) the geology of the property;
  - c) the storm/beach ridge;
  - d) the existence of a protective reef adjacent to the proposed development;
  - e) the location of adjacent development; and
  - f) any other material consideration which the Authority considers will affect the proposal.

In this instance, the Authority is of the view that the proposed second floor addition will be no closer to the canal with the exception of the small balcony. Therefore, the setback of the proposed development is consistent with the established development on

site and it will not detract from the ability of adjacent land owners from enjoying the amenity of their lands.

### **AGENCY COMMENTS**

The Authority received and considered comments the Department of Environment.

#### **Department of Environment (February 22, 2024)**

*This review is provided by the Director of the Department of Environment (DoE) under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013). This review is provided in accordance with Section 41(3) of the National Conservation Act and the Section 41 Guidance Notes issued by the National Conservation Council.*

#### **Advice to the Applicant**



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

*As seen in Figure 1 above, the application site is man-modified and of limited ecological value.*

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

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



Figure 2. The application site with the parcel boundary highlighted in red (Aerial Imagery Source: UKHO, 2021; Architectural Plans Source: John Doak, 2023).

The DoE note that the photos attached to the application indicates that there is current damage to the kayak ramp. The submitted plans indicate that the kayak ramp will be abandoned and wood boarded decking will be placed on top. As some of the works associated with this application will take place in the water, we strongly recommend the use of silt screens to contain any sedimentation or debris from construction that may enter the adjacent marine environment.

If the Central Planning Authority or Planning Department is minded to grant planning permission for the proposed additions, we recommend the inclusion of the following conditions in the approval to prevent damage to the adjacent marine environment:

1. All construction materials shall be stockpiled at a minimum of 20 feet from the canal edge to reduce the possibility of run-off washing material and debris into the canal causing turbidity and impacting water quality.
2. If the construction uses insulating concrete forms (ICFs) or other polystyrene materials, measures (such as screens or other enclosures along with vacuuming) shall

- be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas or pollute the adjacent marine environment.*
- 3. The construction area shall be fully enclosed with silt screens with a 4-foot minimum skirt depth to contain any sedimentation or debris arising from the proposed additions. The silt screens shall remain in place until the water contained inside the screens has cleared to the same appearance as the water outside of the screens.*

### **APPLICANT'S LETTER**

*With reference to our client's application for planning permission to renovate an existing boathouse and add a second floor level and associated works, we request the Central Planning Authority's approval to vary the proposed building's boundary setbacks as shown in the attached plans as described below.*

### **BOUNDARY VARIANCE**

*(1) The applicant seeks the CPA's consideration to allow the east side setback of the existing building to be maintained and to approve the proposed second floor to be allowed noting the upper floor would be set at 10ft at the south east corner and up to 29'11" at the north east corner.*

*(2) Similarly on the southern side of the existing building the Applicant request the CPA's favourable consideration to vary the setback and allow the second floor space to be built on top of the existing building.*

### **OTHER CONSIDERATIONS**

*With reference to Clause 8 (11) regarding setbacks, waterfront property the Authority may grant permission for the proposed side setback of the setbacks requested, all exceeding min15ft for residential zoning, and having regard to:*

- (a) the elevation of the property and its environs – the proposals respect the existing shoreline, contours and levels of the existing conditions*
- (b) the geology of the property – the geology of the land is suitable to the proposed use and method of construction*
- (c) the storm/beach ridge – the proposals respect the location of the storm ridge and the natural and manmade topographical profiling of this coastline and subject property*
- (d) the existence of a protective reef adjacent to the proposed development – the proposals will have no negative impact to the reef, shoreline or other adjacencies in the ocean*
- (e) location of adjacent development – the proposal is respectful of neighbouring properties and does not negatively impact adjacent development*
- (f) any other material consideration which the Authority considers will affect the proposal – there is no other aspect nor material consideration that would affect the proposal*

*The Applicant requests the CPA's favourable review of the above noted variance requests.*

*If you have any queries or require further information prior to reviewing this application please do not hesitate to contact the writer.*

*We look forward to hearing from you and thank you for your kind attention.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for a second floor addition to garage; 756 sq. ft. & modification to deck on Rum Point Dr., North Side.

### **Zoning**

The property is zoned Low Density Residential.

### **Specific Issues**

#### **1) Canal setback**

Regulation 8(10)(ea) states *“in areas where the shoreline is a canal, all structures and buildings, including ancillary buildings, walls and structures, shall be setback a minimum of 20’ from the physical edge of the canal.”* The applicant has proposed a wooden deck covering the existing concrete ramp which will be decommissioned. The parcel boundary falls within the adjoining canal and the deck would abut the canal. The second storey addition would be 12’ from the edge of the canal with the small balcony protruding an additional 4’ 2” into that setback. The addition would be 2’ 10” from the inlet.

#### **2) Side setback**

Regulation 9(8)(j) of the Development & Planning Regulations (2022 Revision) states *“the minimum side setback is 10’ for a building of one storey and 15 feet for a building of more than one storey.”* The existing garage is 10’-6” from the eastern boundary and the second floor addition will retain that setback which is less than the required 15’-0”. In addition, the deck addition and stairs would also be encroaching the eastern boundary at 3’-5” (deck) & 14’-9” (stairs) a difference of 4’-6” (garage), 6’-7” (deck) & 3” (stairs) respectively.

## **2.14 SOUTH COVE LTD. (Professional Planning and Development Services (PPDS) Cayman Ltd.) Block 61A Parcel 47 (P23-1036) (\$5,000) (MW)**

Application for a 12 lot subdivision (9 residential lots, 2 LPP lots & 1 road lot)

### **FACTS**

<i>Location</i>	Old Robin Rd., North Side
<i>Zoning</i>	<b>Agricultural / Residential</b>
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	2.836 ac. (123,552 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Vacant

## **BACKGROUND**

January 17, 2024 (CPA/03/24; Item 2.7) – It was resolved to adjourn the application for the following reasons:

- 1) The applicant is required to provide a copy of the submission made to the Lands and Survey Department to relocate the existing right-of-way as shown on the subdivision plan.
- 2) The applicant is required to submit a revised plan showing the deletion of lot 13 in the traffic circle and incorporating that amount of land into the two LPP parcels (proposed lots 10 and 11).

**Decision:** It was resolved to adjourn the application as the applicant is required to provide a copy of the submission made to the Lands and Survey Department to relocate the existing right-of-way as shown on the subdivision plan.

## **AGENCY COMMENTS**

The Authority received and considered comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment.

### **Water Authority**

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

#### **Wastewater Treatment**

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

#### **Water Supply**

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

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

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

### **National Roads Authority**

*As per your memo dated November 29th, 2023 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

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

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

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

*The applicant is encouraged to consider stormwater management techniques other than deep wells, and to contact the NRA for advice on these alternative control measures.*

#### ***Infrastructure Issues***

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

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

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

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

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

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

### **Department of Environment (7 December 2023)**

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



*The application site consists of a mixture of primary dry shrubland and primary dry forest and woodland habitat. Primary habitat is a mature habitat in its natural state, otherwise uninfluenced by human activity where ecological processes are not significantly disturbed. These habitats are often very old, existing long before humans, and may consist of many endemic and ecologically important species. Primary habitat is in severe decline and becoming a scarce and highly threatened resource as a result of land conversion for human activities.*

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

*Primary habitat provides many ecological services and can be retained and used in a variety of ways on a property:*

- It can be retained along parcel boundaries to serve as privacy, noise and sound buffers, and screening.*
- It can serve as an amenity, providing green space and shade for livestock or for those on the property.*
- It can remain as a habitat for endemic wildlife such as anoles, birds, butterflies, and other pollinators. This habitat helps to contribute to the conservation of our local species and pollination of crops.*
- It can assist with drainage, directly by breaking the momentum of rain, anchoring soil, and taking up water and indirectly through keeping the existing grade and permeable surfaces.*
- It can help reduce carbon emissions by leaving the habitat to act as a carbon sink and allow natural processes to remove carbon dioxide from the atmosphere. Destroying native vegetation releases carbon stored in the plant material, soil, and peat.*
- When located in an area of wider primary habitat, wildlife corridors can be created connecting areas of a habitat that would have otherwise been isolated through development, allowing for the movement of animals and the continuation of viable populations.*

*The DoE also notes that Land for Public Purpose (LPP) lot 13 located within the roundabout is not useable and is of the opinion that it should not count toward LPP.*

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

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

### **Fire Department**

*The Fire department have no objection and save comments for future development. The Cayman Islands Fire Service adheres to the 2006 Fire Brigade Law, 1995 revision Fire Brigade law of the 1994 Standard Fire Prevention Code, the 1997 Fire Code, and all relevant NFPA Codes.*

### **Department of Agriculture**

*No comments received to date.*

### **APPLICANT'S LETTERS**

#### **Letter #1**

*Enclosed please find the relevant documents relating to the proposed subdivision.*

*Lots 10, 11, and 13 are LPP lots. We are asking for a variance on the lot width and size for these parcels under the Planning Regulation 8(13) (b) (iii) to accommodate this.*

*Lots 6 is narrow at the back but widens towards the road. It also has ample buildable area which is now detailed on the amended subdivision plan. We are asking for a variance on the lot width for this parcel under the Planning Regulation 8(13) (b) (iii) to accommodate this.*

*Please do not hesitate to contact me if you have any questions or require additional information.*

#### **Letter #2**

*As you are aware, on the 17th January 2024 CPA adjourned determination of the above application for the following reasons:*

- 1) *Applicant is required to revise the subdivision plan to relocate the existing right-of-way.*
- 2) *Delete LPP lot 13, a traffic circle, and incorporate that land into the remaining LPP parcels (proposed lots 10 and 11).*

*I have attached a copy of the revised subdivision plan, will upload to OPS, along with a copy of this email, once OPS is back online.*

*Would appreciate if the following can be considered by CPA:*

*A revised subdivision plan has been uploaded to OPS detailing the removal of the traffic circle and inclusion of the land into vegetation buffers along the road frontage of the subdivision.*

*Considerable effort has been made to seek agreement with the party that benefits from the right of way to relocate the feature. Regrettably, at this stage consensus has not been achieved for this civil matter. However, members are invited to note that in this instance, the size of proposed lots 4 and 5, the location of the right of way, and the extent of remaining developable land would ensure the existing right of way is not infringed upon. Considering these factors, we hope members will agree that it in this instance retaining the right of way in the current position is acceptable.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for a 13 lot subdivision (9 residential lots, 3 LPP lots & 1 road lot) to be located on Old Robin Rd., North Side.

### **Zoning**

The property is zoned Agricultural Residential.

### **Specific Issues**

#### **1) Zoning**

Regulation 21 of The Development and Planning Regulations (2022 Revision) states “two houses per acre may be built on Agricultural / residential land but if the Authority is satisfied that any such land is not situated over a water lens and is not particularly suited to agriculture, it may permit any development which complies with the requirements for low density residential areas.” The Authority should note the mentioned development would be over the allowable density for Agricultural / Residential land as only 4 homes would be allowed per regulation.

The Authority should note that the site is not located over a water lens and according to the Development Plan Agricultural Classification map, the site is situated in the second worst classification. The Authority needs to determine if the low density residential development parameters can be applied to this application.

#### **2) LPP location**

Regulation 28(1) states that according to the size of the subdivision, the Authority may require the applicant to set aside land not exceeding five percent of the gross area of land being developed. In this instance, 5% of the gross area is 6,177 square feet. The applicant is proposing 3 LPP parcels. Lots 10 and 11 are strips of land between the proposed residential lots and Old Robin Rd and would equal 5,226 square feet. It should be noted that the NRA has not requested land to be set aside for road widening purposes. The third LPP is a small traffic circle in the middle of the cul-de-sac which would bring the total LPP dedication to 6,476 square feet. While the amount of LPP complies with the states Regulation the functionality and utility of the proposed LPP parcels is questioned.

### 3) Lot Width

Regulation 9(8)(g) of The Development and Planning Regulations (2022 Revision) states “*the minimum lot width for detached and semi-detached houses and duplexes is 80 feet.*” The proposed widths as follows for Lot 5 (**73.1’**), Lot 10 LPP (**24.8’**) & Lot 11 LPP (**33.2’**). The proposed lots have a difference of Lot 5 (**6.9’**), Lot 10 LPP (**55.2’**) & Lot 11 LPP (**46.8’**) respectively.

### SUPPLEMENTARY ANALYSIS

The applicant has submitted a revised plan in accordance with reason 1) of the adjournment. Regarding reason 2), the applicant has outlined their position on the right-of-way and their request for the Authority to allow the right-of-way to remain where it is currently located.

### 2.15 RANSDALE RANKIN (Roland Bodden and Co.) Block 75A Parcel 356 (P23-1083) (\$5,500) (MW)

Application for a 3 lot subdivision.

#### FACTS

<i>Location</i>	John McLean Dr., East End
<i>Zoning</i>	<b>Low Density Residential</b>
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	2.095 ac. (91,258.2 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Existing residence

#### BACKGROUND

February 13, 2024 (CPA/05/24; item 2.22) – approval granted for ATF house and shed on Block 75A Parcel 355

**Decision:** It was resolved to adjourn the application and invite the applicant to appear before the Authority to discuss concerns regarding the status of the physical road and the comments from the National Roads Authority.

#### AGENCY COMMENTS

The Authority received and considered comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment.

#### **Water Authority**

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

#### Wastewater Treatment

- The developer is advised that wastewater treatment and disposal requirements for built development are subject to review and approval by the Water Authority.
- The existing building(s) on the parcel are currently served by a septic tank(s)/ATU(s). 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.

### **Stormwater Management**

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

### **Water Supply**

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

- **Please be advised that extensions in private roads are done at the owner's expense. The timing of any pipeline extension is at the sole discretion of the Water Authority.**
- 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.**

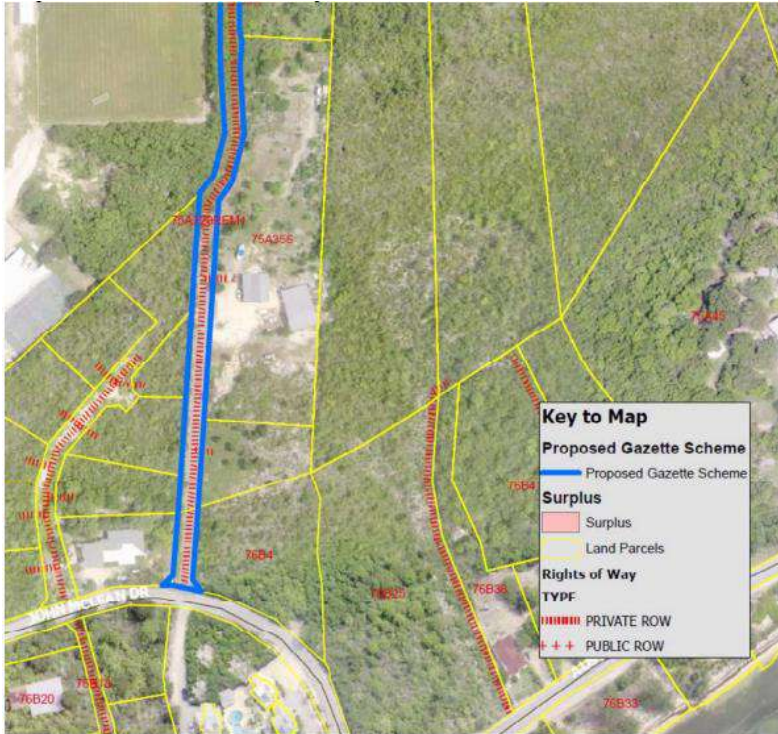
If there are questions or concerns regarding the above, please email them to: [development.control@waterauthority.ky](mailto:development.control@waterauthority.ky)

### **National Roads Authority**

As per your memo dated December 15th, 2023 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.

**The NRA has no objections or concerns regarding the above proposed three lot subdivision. However, the NRA, would like the CPA to be aware of the proposed Gazette which will be BP675 funding of the project has not been secured as yet. The**

gazette was prepared at the request of the PAHI Ministry, and Member of Parliament for East End.



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

### Department of Environment (13-12-23)

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 contains recent vegetative regrowth, particularly in the northern area.

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

Native vegetation can be retained and used in a variety of ways on a property:

- It can be retained along parcel boundaries and between buildings to serve as privacy, noise and sound buffers and screening.
- It can be incorporated into the landscaping schemes for low-maintenance low-cost landscaping. Native plants are best suited for the conditions of the site, including the

temperature and amount of rainfall. They are climate-appropriate and require less maintenance and irrigation.

- It can serve as an amenity, providing green space and shade for those who live nearby or on the property.
- It can remain as a habitat for endemic wildlife such as anoles, birds and butterflies. This habitat helps to contribute to the conservation of our local species.
- It can assist with drainage, directly by breaking the momentum of rain, anchoring soil, and taking up water and indirectly through keeping the existing grade and permeable surfaces.
- It can help reduce carbon emissions by leaving the habitat to act as a carbon sink and allow natural processes to remove carbon dioxide from the atmosphere. Destroying native vegetation releases carbon stored in the plant material, soil and peat.
- When located in an area of wider primary habitat, wildlife corridors can be created connecting areas of a habitat that would have otherwise been isolated through development, allowing for the movement of animals and the continuation of viable populations.

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

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

### **Fire Department**

The Fire department have no objection and save comments for future development. The Cayman Islands Fire Service adheres to the 2006 Fire Brigade Law, 1995 revision Fire Brigade law of the 1994 Standard Fire Prevention Code, the 1997 Fire Code, and all relevant NFPA Codes. (18-12-23)

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for a 3 lot subdivision to be located off John McLean Dr., East End.

### **Zoning**

The property is zoned Low Density Residential and the Department would offer the following comments regarding the specific issue noted below.

### **Specific Issues**

#### **1) NRA concerns**

The NRA has no objections regarding the proposed subdivision however they have submitted comments regarding the proposed Gazette (BP675) which is currently in the process of securing funding.

The parcels within 150' radius were notified and no objections were received.

The Authority should assess the concerns of the NRA and if the proposed warrants granting planning permission.

**2.16 MARCO ARCHER (Cayman Survey Associates Ltd.) Block 56B Parcel 100 (P24-0009) (\$49,000) (EJ)**

Application for forty-four (44) lot subdivision.

**FACTS**

<i>Location</i>	Off Bodden Town Road, Breakers
<i>Zoning</i>	<b>LDR</b>
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	12.1 ac. (527,076 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Vacant

**Decision:** It was resolved to grant planning permission, subject to the following conditions:

- 1) Prior to the commencement of any site works such as filling, grading and road construction (with the exception of minor land clearing needed to establish site levels for the preparation of a stormwater management plan), the applicant shall submit:
  - a) Within 60 days of the date of this decision, a revised plan showing a hammerhead turnaround for lots 38 and 40.
  - b) Specifications of any proposed underground utilities; including location, type of utilities, and trench dimensions.
  - c) A stormwater management plan prepared in accordance with the requirements of the Managing Director, NRA and approved by the Central Planning Authority. The plan shall be designed to embrace storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and should include, but not be limited to, the location of all drainage facilities and general grading details of the parcels (roads included). In general, the entire site shall be graded in such a manner that stormwater runoff is no more than that which occurred during



predevelopment conditions along private boundaries with any excess runoff directed to one central drainage facility or a series of facilities.

- 2) Prior to the subdivision plan being finalized, the following conditions shall be satisfied:
  - a) All underground utilities shall be inspected and approved by the relevant agencies prior to the utilities being buried.
  - b) The approved stormwater management system shall be installed on site.
  - c) The final subdivision plan shall indicate a vehicular easement over the subdivision access road in favour of each lot. The final plan must be accompanied with the requisite grant of easement forms detailing the easements to be registered.
  - d) The access road (s) abutting the proposed lots shall have a minimum of a 30' wide demarcated road parcel and shall be constructed with asphalt and approved by the Central Planning Authority prior to the lots being registered. The applicant shall liaise with the Managing Director, National Roads Authority (NRA), at predetermined stages of road construction to ensure compliance with the requisite standards. Failure to do so may render the project unacceptable. Please be advised that the road base shall be constructed to National Roads Authority (NRA) minimum design and construction specifications for subdivision roads. The NRA shall inspect and certify road base construction prior to road surfacing activities.
  - e) The applicant shall provide water infrastructure for the entire sub-division. The developer shall submit plans for the water supply system for approval by the Water Authority. The water supply system shall be installed to the Authority's specifications, under the Authority's supervision. Copies of these specifications are available at the Water Authority's office on Red Gate Road.
  - f) The applicant shall request to have the sub-division connected to the Water Authority's public water system. This request will be acted upon after the pipelines on the sub-division have been installed in accordance with the WAC specifications and have passed all specified tests.
  - g) There shall be no land clearing, excavation, filling or development of the resultant subdivided parcels without planning permission for such works being granted.
  - h) The surveyor's final drawing **shall include the surveyed dimensions of all lots** and shall be submitted to the Director of Planning for approval prior to the survey being registered.

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) With the exception of the widths of a few lots, which is addressed below, the application complies with the Development and Planning Regulations (2022 Revision).
- 3) Two of the proposed lots do not comply with the minimum required lot width per Regulation 9(8)(g) of the Development and Planning Regulations (2022 Revision). The

Authority is of the opinion that pursuant to Regulation 8(13)(b) there is sufficient reason and exceptional circumstance to allow the lesser lot widths as follows:

- a) The characteristics of the proposed development are consistent with the character of the surrounding area;
- b) The lots with the lesser lot width are typical of most subdivision design where there are road corners and turnarounds; and
- c) 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.

### **AGENCY COMMENTS**

The Authority received and considered comments from the Water Authority, National Roads Authority, Department of Environment and Fire Department.

#### **Water Authority**

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

#### **Wastewater Treatment**

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

#### **Water Supply**

*The proposed development site is located within the Water Authority's piped water supply area, however, please be advised that the connection of a proposed development to the Water Authority's piped water supply may require an extension.*

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

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

### **National Roads Authority**

*As per your memo dated January 15<sup>th</sup>, 2024 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.*

#### **General Issues**

- *The proposed driveway is on an unbuilt section of road, however, the access road abutting will be **56B103** is required to construct a 30ft. road parcel before construction of any works (CPA/11/18; Item 2.9). The NRA would advise the CPA to ensure roadworks have been completed in their consideration.*
- *The NRA would like for the applicant to provide a plan for traffic calming measures to mitigate excessive speeding **within** the subdivision.*
- *A thirty (30) ft. wide road parcel needs to be provided in order to have adequate access as the NRA does not endorse the use of vehicular ROWs.*

#### **Stormwater Management Issues**

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

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

#### **Infrastructure Issues**

*The NRA advises the CPA to require the developer to provide for signage (stop signs, etc.), street lighting and any other traffic calming measures on the proposed roads of the subdivision. Once the roadway has been taken over' as a public road, the NRA can then assume that responsibility. This site will need a stop sign with stop bars at the junction of the proposed 30ft. road parcel.*

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

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

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

## Department of Environment (February 22, 2024)

*This review is provided by the Director of the Department of Environment (DoE) under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013). This review is provided in accordance with Section 41(3) of the National Conservation Act (NCA) and the Section 41 Guidance Notes issued by the National Conservation Council.*

*The application site consists of a mixture of primary dry forest and primary dry shrubland habitats. Primary habitat is a mature habitat in its natural state, otherwise uninfluenced by human activity where ecological processes are not significantly disturbed. These habitats are often very old, existing long before humans and may consist of many endemic and ecologically important species. Primary habitat is in severe decline and becoming a scarce and highly threatened resource as a result of land conversion for human activities.*

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

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

- It can be retained along parcel boundaries and between buildings to serve as privacy, noise and sound buffers and screening.*
- It can be incorporated into the landscaping schemes for low-maintenance low-cost landscaping. Native plants are best suited for the conditions of the site, including the temperature and amount of rainfall. They are climate-appropriate and require less maintenance and irrigation.*
- It can serve as an amenity, providing green space and shade for those who live nearby or on the property.*
- Shade provided by retaining mature vegetation can also help to lower cooling demand and utility costs.*
- It can remain as a habitat for endemic wildlife such as anoles, birds and butterflies. This habitat helps to contribute to the conservation of our local species.*
- It can assist with drainage, directly by breaking the momentum of rain, anchoring soil, and taking up water and indirectly through keeping the existing grade and permeable surfaces.*
- It can help reduce carbon emissions by leaving the habitat to act as a carbon sink and allow natural processes to remove carbon dioxide from the atmosphere. Destroying native vegetation releases carbon stored in the plant material, soil and peat.*

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

*There also appears to be some wetland vegetation, particularly in the proposed Land for Public Purpose (LPP) areas. Should these areas contain mangroves, the applicant is reminded that mangroves are Schedule 1, Part 2 Protected Species under the National Conservation Act (NCA) with an adopted Conservation Plan. It is an offence to remove mangroves unless permission is explicitly sought to remove them either through the granting and implementation of planning permission or a National Conservation Council Section 20 permit. The Mangrove Species Conservation Plan can be downloaded at the following link: <https://conservation.ky/wp-content/uploads/2021/01/Species-Conservation-Plan-for-Mangroves-FINAL.pdf>.*

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

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

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

### **Fire Department**

Fire Department approved.

### **APPLICANT'S LETTER**

*Please find attached our scheme to Subdivide 38C 72 into the following configuration:*

- *41 Residential Lots*
- *2 Lots for LPP*
- *1 Road Lot*

*We have attempted to make all lots a minimum of 80' wide and 10,000 sq. ft. in area, but due to road truncations, curves & the irregular shape of the southern boundary it has not always been possible to keep to the 80' minimum.*

*Variances are therefore required at these locations. 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 forty-one (41) house lots, two (2) lpp lots and one (1) road lot is located off Bodden Town Road in Breakers, west of Caribbean Haven residential centre. The proposed subdivision will have a 30' road with access via a 30' vehicular right of way over 56B39 and 56B 41 Rem1 from Bodden Town Road. If approval is granted, a condition should be imposed to ensure the access road is constructed to NRA standards and a piped water supply is installed.

### **Zoning**

The property is zoned Low Density Residential.

### **Specific Issues**

#### **1) Lot width variance**

The 41 residential lots meet planning regulations 9(8)(d) exceeding the minimum lot size of 10,000 sq. ft.; however, lots 38 and 40 does not meet Regulations 9 (8)(g) proposed at 44' & 28' vs 80' road frontage. The Authority is asked to consider if it satisfied with the proposed including the location of the two-lpp lots. The proposed will have a 30' road with access via a 30' vehicular right of way over 56B39 and 56B41rem1 from Bodden Town Road.

#### **2) Turnaround for lots 38 & 40**

It is recommended that the subdivision be revised to include a hammerhead turnaround for lots 38 & 40.

#### **2.17 TREVOR WATKINS (Eric Cronier Limited) Block 22E Parcel 545 (P23-1188) (\$10,000) (NP)**

Application for subdivision and combination

### **FACTS**

<i>Location</i>	Grand Harbour, George Town
<i>Zoning</i>	<b>LDR, Mangrove Buffer</b>
<i>Notification Results</i>	No objectors
<i>Parcel size</i>	60 acres
<i>Parcel size required</i>	10,000 sq. ft. for dwellings 25,000 sq. ft. for apartments
<i>Parcel width required</i>	80 feet for dwellings 100 feet for apartments
<i>Proposed lot sizes</i>	16,000 sq. ft.
<i>Current use</i>	Road & Undeveloped

## **BACKGROUND**

**April 13, 2022** (CPA/11/22; Item 2.27) – The Authority resolved to grant planning permission for a three lot subdivision on Block 22E Parcel 539 subject to the following conditions:

- 1) The applicant shall submit a revised plan showing the 20’ swale portion of Lot A extended to the southern limit of Lot B.
- 2) Prior to the subdivision plan being finalized, the 20’ wide swale shown on Lot A shall be cleared of vegetation in order to allow the swale to effectively function.
- 3) The surveyor's final drawing shall include the surveyed dimensions of all lots and must show all required easements and shall be submitted to the Director of Planning for approval prior to the survey being registered.

**October 23, 2019** (CPA/22/19; Item 2.16) – The Authority resolved to modify planning permission to combine two lots into one and revise the canal design subject to the applicant submitting a revised plan showing all aspects of the canal and lot 62 outside of the mangrove buffer area.

**January 23, 2019** (CPA/02/19; Item 2.1) – The Authority resolved to modify planning permission to allow the revised subdivision layout subject to the applicant submitting a revised plan showing the northerly edge of the proposed canal in line with the northerly edge of the dyke conveyance system.

**October 31, 2018** (CPA/24/18; Item 2.3) – The Authority resolved to modify planning permission to allow minor revisions to the previously approved lot sizes and to add an additional 22 residential lots and 1 road parcel.

**Decision:** It was resolved to grant planning permission, subject to the following conditions:

- 1) The surveyor's final drawing **shall include the surveyed dimensions of all lots and must show all required easements** and shall be submitted to the Director of Planning for approval prior to the survey being registered.
- 2) Proposed Lots A and C shall be combined.

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) With the exception of the lot width, which is addressed below, the application complies with the Development and Planning Regulations (2022 Revision).
- 3) The proposed application does not comply with the minimum required lot width per Regulation 9(8)(g) of the Development and Planning Regulations (2022 Revision). The Authority is of the opinion that pursuant to Regulation 8(13)(b) there is sufficient reason and exceptional circumstance to allow the lesser lot width as follows:
  - a) The resultant lot after A and C are combined will not be a developable lot, it will be used for the purpose of providing a dock for the subdivision; and
  - b) 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.

### **AGENCY COMMENTS**

The Authority received and considered comments from the Department of Environment and Water Authority.

#### **Department of Environment - February 16, 2024**

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

*Future development of any subdivided parcels should be subject to consultation with the Central Planning Authority and National Conservation Council.*

#### **Water Authority Cayman**

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

##### **Wastewater Treatment**

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

##### **Water Supply**

*The proposed development site is located within the Water Authority's piped water supply area, however, please be advised that the connection of a proposed development to the Water Authority's piped water supply may require an extension.*

- *Extensions in private roads are done at the owner's expense and the timing of any pipeline extension is at the sole discretion of the Water Authority.*



- *The developer shall contact The 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**

*On behalf of our client, we hereby apply for a variance to allow the proposed sub-division to be approved as submitted.*

*The purpose of the sub-division is to create two 30 ft. wide lots (lots A & C) which will be combined to create a larger 60 ft. wide lot.*

*The new 60 ft. wide lot is being created to separate it from the road parcel (lot B).*

*This new lot is to be used for future docks and the owner would therefore like to maintain control for the use, maintenance and access since the road parcel is to be used by the owners of the sub-division development (Harbour Reach).*

*We therefore kindly request your approval as it relates to Section 8 (13) of the Development and Planning Regulations (2018 Revision), the application can be considered for approval, since subsection (b) (iii) states that "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."*

### **PLANNING DEPARTMENT ANALYSIS**

#### **General**

The subject property is located in Grand Harbour, George Town, at the northern terminus of Edgewater Way.

The property contains a road and undeveloped lands.

Proposed parcel A is 8,200 square feet and has a width of 30 feet.

Proposed lot B is 1.27 acres and has a width of 30 feet.

Proposed lot C is 7,800 square feet and has a width of 30 feet.

The proposal is to combine lots A and C, forming a parcel with 60 feet of width and 16,000 square feet of area.

It is the understanding of staff that the newly combined A and C parcel will be developed with an access road and docks in the future.

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

**Zoning**

Proposed parcel A is zoned both Low Density Residential and Mangrove Buffer.

Proposed parcel B is a road parcel (Edgewater Way) that is zoned Low Density Residential.

Proposed parcel C is zoned Low Density Residential.

**Specific Issues**

**1) Lot width (30' & 60' vs 80')**

The proposed width of Lot B is 30 feet and the proposed width of Lots A and C following combination are 60 feet.

Regulation 9(8)(g) states that the minimum lot width in an LDR zone is 80 feet.

The applicant has submitted a variance letter and the Authority should determine if lot width variances are warranted in this instance.

**2.18 BARRINGTON OLIVER (Craftman's Touch) Block 32E Parcel 123 (P23-0879) (\$478,693) (MW)**

Application for a duplex.

**FACTS**

<i>Location</i>	Cadet Dr., Bodden Town
<i>Zoning</i>	<b>Agricultural Residential</b>
<i>Notification result</i>	No objections
<i>Parcel size proposed</i>	0.2616 ac. (11,395.296 sq. ft.)
<i>Parcel size required</i>	12,500 sq. ft.
<i>Current use</i>	Vacant
<i>Proposed building size</i>	2,659.41 sq. ft.
<i>Total building site coverage</i>	23.34%
<i>Required parking</i>	2
<i>Proposed parking</i>	5

**Decision:** It was resolved to grant planning permission, subject to the following conditions: Condition (1) listed below shall be met before permit drawings can be submitted to the Department of Planning.

- 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 is required to apply for a Permit from the Director of Planning. Construction shall not commence prior to the issuance of a Permit.
- 3) If during construction of the building insulating concrete forms (ICFs) are used, measures such as screens or other enclosures along with vacuuming shall be put in place to ensure that any shavings or foam waste is completely captured on site and does not impact the surrounding area.
- 4) Prior to undertaking any sanding or breaking down of polystyrene as part of the construction process, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas or pollute the adjacent Marine Protected Area offshore.
- 5) Unless specifically authorized otherwise in writing by the Central Planning Authority, the Development shall be carried out strictly in accordance with the approved plans.
- 6) The applicant shall obtain a Final Certificate (of Fitness for **Occupancy**) **prior to occupying the building(s)**.

If the existing grade level does not currently provide for it, the applicant is reminded that the finished floor level of all buildings should be at least five feet (5') above mean sea level.

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) The Authority considered the application and determined that planning permission would be granted as the application complies with the Development and Planning Regulations (2022 Revision). Further in this regard, the lot has existed for many years, similar to the other lots in the immediate area. All of these lots are zoned A/R and they have all been developed residentially. The proposed duplex is consistent with these previous approvals.

### **APPLICANT'S LETTER**

*With respect to our submission for a Duplex, on block 32E parcel 123, Grand Cayman, we hereby request variance as follows:*

*Land Size Variance is requested. Where the regulations requires 12,500ft, 11,614.87ft is proposed.*

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

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

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

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for a duplex; 2,659.41 sq. ft. to be located on Cadet Dr., Bodden Town.

### **Zoning**

The property is zoned Agricultural Residential.

### **Specific Issues**

#### **1) Lot size**

Regulation 21 of the Development & Planning Regulations (2022 Revision) states “*Two houses per acre may be built on agricultural / residential land but if the Authority is satisfied that any such land is not situated over a water lens and is not particularly suited to agriculture, it may permit any development which complies with the requirements for low density residential areas.*” As such Regulation 9(8)(e) states “*the minimum lot size for each duplex is 12,500 sq. ft.*”. The proposed lot would be **11,395.296 sq. ft.** a difference of **1,104.704 sq. ft.**

#### **2.19 SHANE AND JANET EBANKS (TSC Architecture) Block 2C Parcel 177 (P23-0934) (\$363,750) (EJ)**

Application for a house.

**Peter Campbell declared a conflict and left the meeting room.**

### **FACTS**

<i>Location</i>	Shady Lane, West Bay
<i>Zoning</i>	<b>LDR</b>
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.19 ac. (8,276 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.

<i>Current use</i>	Vacant
<i>Proposed building size</i>	2,628 sq. ft.
<i>Total building site coverage</i>	17.76%

**Decision:** It was resolved to grant planning permission, subject to the following conditions: Condition (1) listed below shall be met before permit drawings can be submitted to the Department of Planning.

- 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 is required to apply for a Permit from the Director of Planning. Construction shall not commence prior to the issuance of a Permit.
- 3) If during construction of the building insulating concrete forms (ICFs) are used, measures such as screens or other enclosures along with vacuuming shall be put in place to ensure that any shavings or foam waste is completely captured on site and does not impact the surrounding area.
- 4) Prior to undertaking any sanding or breaking down of polystyrene as part of the construction process, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas or pollute the adjacent Marine Protected Area offshore.
- 5) Unless specifically authorized otherwise in writing by the Central Planning Authority, the Development shall be carried out strictly in accordance with the approved plans.
- 6) The applicant shall obtain a Final Certificate (of Fitness for **Occupancy**) **prior to occupying the building(s)**.

If the existing grade level does not currently provide for it, the applicant is reminded that the finished floor level of all buildings should be at least five feet (5') above mean sea level.

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) With the exception of the front and side setbacks, which are addressed below, the application complies with the Development and Planning Regulations (2022 Revision).
- 3) The proposed application does not comply with the minimum required front and side setbacks per Regulations 9(8)(i) and (j) of the Development and Planning Regulations (2022 Revision). The Authority is of the opinion that pursuant to Regulation 8(13)(b)

there is sufficient reason and exceptional circumstance to allow the lesser setbacks as follows:

- a) The characteristics of the proposed development are consistent with the character of the surrounding area;
  - b) 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; and
  - c) The proposal is consistent with the provisions of Section 2.6 of The Development Plan 1997.
- 4) Per Regulation 22, the lot has existed prior to August 28, 1977 therefore, the Authority must approve the dwelling unit regardless of the lot size.

### **APPLICANT'S LETTER**

*This letter is written on behalf of Shane and Janet Ebanks; they recently applied to the department for a 2-story house on the referenced property. The total square footage is 2,628. As required, notices were sent by registered mail to all owners within an 80-foot radius on October 31, 2023. They requested a side setback variance and would like the board's consideration.*

*As per section 8 (13) (b), (iii), there is sufficient reason to grant a side setback variance as exceptional circumstances exist, which may include the fact the proposal will not be materially detrimental to persons residing or working in the vicinity to the adjacent property or the public welfare.*

### **PLANNING DEPARTMENT ANALYSIS**

#### **General**

The proposed four (4) bedroom house is located off Shady Lane in West Bay.

#### **Zoning**

The property is zoned Low Density Residential.

#### **Specific Issues**

##### **1) Lot size**

The required lot size in the LDR zone is 10,000 sq ft, the subject lot size is 8,276 sq ft. The lot has existed since 1974 and Regulation 22 states the Authority may permit building of dwelling units on a lot size of which is below the prescribed minimum and must so permit if the lot existed as a separate lot on the 28<sup>th</sup> day of August, 1977.

##### **2) Front setback**

The proposed four-bedroom two-storey house is setback 26.6' from the front boundary; however, Shady Lane traverses over the said front boundary resulting in the house being set back about 9.8' from the road vs 20' per Regulation 9(8)(i).

**3) Side setback**

Additionally, the two-storey house is setback 8'.7" vs 15' from the south side not meeting regulations 9(8)(j).

**2.20 ALEXANDRA CUGLIARI (Paradise Drafting Ltd.) Block 17A Parcel 144 (P23-1014) (\$25,000) (MW)**

Application to modify planning permission to relocate the LPG tank; revise the pool layout & increase the vinyl privacy fence height from 4' – 6'.

**Haroon Pandohie declared a conflict and left the meeting room. Ron Sanderson sat as Acting Executive Secretary.**

**FACTS**

<i>Location</i>	Crighton Dr., West Bay
<i>Zoning</i>	<b>Low Density Residential</b>
<i>Parcel size proposed</i>	0.4036 ac. (17,580.816 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Approved residence under construction

**BACKGROUND**

July 9, 2021 – House, pool, cabana, U/G lpg tank & dock - the application was considered and it was resolved to grant planning permission.

**Decision:** It was resolved that having regard to the Development Plan and other material considerations it is expedient to modify planning permission. Now therefore the Central Planning Authority in pursuance of Section 17 of the Development and Planning Act (2021 Revision) hereby orders that planning permission be modified to relocate the LPG tank; revise the pool layout & increase the vinyl privacy fence height from 4' – 6'.

All other conditions of the July 9, 2021 Administrative approval remain applicable.

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) The Authority considered the application and determined that planning permission would be modified as the application complies with the Development and Planning Regulations (2022 Revision). Further, the Authority is satisfied that the fence height is in keeping with the character of the area.

**PLANNING DEPARTMENT ANALYSIS**

**General**

The application is for a modification to relocate LPG tank; revise pool layout & increase vinyl privacy fence height from 4’ – 6’ to be located on Crighton Dr., West Bay.

**Zoning**

The property is zoned Low Density Residential.

**Specific Issues**

**1) Fence height**

The CPA fence guideline 4.3.1 stipulates that *“In residential and tourism-related zones, no part of a solid wall or fence should exceed 48 inches in height”*- The proposed vinyl fence would be 6’ in height, a difference of 2’-0”.

**2.21 THE GROVE TOO (Arco Ltd.) Block 11D Parcel 127 (P23-1001) (\$4,500,000) (MW)**

Application to modify planning permission to revise the site plan & floor plan layout, which will decrease the number of apartments from 80 to 68 units and reduce the number of parking spaces to 210.

**Ian Pairaudeau declared a conflict and left the meeting room. Handel Whittaker sat as Acting Chair.**

**FACTS**

<i>Location</i>	Esterley Tibbetts Hwy., West Bay
<i>Zoning</i>	<b>Neighbourhood Commercial</b>
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	2.316 ac. (100,884.96 sq. ft.)
<i>Parcel size required</i>	20,000 sq. ft.
<i>Current use</i>	Approved development under construction.
<i>Proposed building size</i>	175,602.73 sq. ft.
<i>Total building site coverage</i>	29%
<i>Allowable units</i>	CPA discretion
<i>Proposed units</i>	68
<i>Allowable bedrooms</i>	CPA discretion
<i>Proposed bedrooms</i>	90
<i>Required parking</i>	192
<i>Proposed parking</i>	210

**BACKGROUND**



February 9, 2022 – Mixed-Use Development (Commercial & Apartments) and Roof Top Pools (CPA/04/22; Item 2.3) – the application was considered and it was resolved to grant planning permission.

November 3, 2022 – Diesel generator – the application was considered and it was resolved to grant planning permission.

August 30, 2023 – Modification increase floor area, revise exterior elevations (CPA/19/23; Item 5.1) – the application was considered and it was resolved to grant planning permission.

January 17, 2024 (CPA/03/24; item 2.7) - It was resolved to adjourn the application and direct the Department to clarify the parking scenario as follows:

- 1) Confirm the total required number of parking spaces
- 2) Confirm the total number of parking spaces being provided vis a vis the applicant's calculations and the Department's calculations
- 3) Confirm the specific parking spaces being deleted
- 4) Confirm whether the off-site parking spaces approved for The Grove (phase 1) still exist or if they are now included with the current application for The Grove Too

**Decision:** It was resolved that having regard to the Development Plan and other material considerations it is expedient to modify planning permission. Now therefore the Central Planning Authority in pursuance of Section 17 of the Development and Planning Act (2021 Revision) hereby orders that planning permission CPA/04/22; item 2.3 be modified to revise the site plan & floor plan layout, which will decrease the number of apartments from 80 to 68 units and reduce the number of parking spaces to 210.

All other conditions of CPA/04/22; item 2.3 remain applicable.

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) The Authority considered the application and determined that planning permission would be modified as the application complies with the Development and Planning Regulations (2022 Revision).

### **APPLICANT'S LETTER**

#### **Letter #1**

*The chart below shows in clouds the modification proposed for the project. (Sheet A1.01 of the Architectural Binder). The change is the combination of some one-bedroom units into two bedroom units. This resulted in a reduction in the number of apartments from 80 to 78 maintaining the same approved number of bedrooms with no change to the square*

footage of the project. Parking requirement was reduced from 210 to 207 and we are providing 212 stalls. Other small changes did not impact on area or aesthetics: a) small storage in the basement, b) location of future bathrooms inside the commercial units c) modified layout of laundry and bathrooms in ground floor d) shape of the rooftop pool and e) elevator's shafts. All marked with clouds #3 for ease of reference in the Architectural Binder Set.

SITE AND BUILDING SUMMARY - SQUARE FOOTAGES									
LEVEL	NUMBER OF PARKING STALLS	AREA RETAIL & OFFICE	ONE-BEDROOM UNITS		TWO BEDROOM UNITS		TOTAL APARTMENT UNITS	TOTAL BEDROOMS	CONSTRUCTION COVERED TOTAL AREA
			UNITS	BEDROOMS	UNITS	BEDROOMS			
BASEMENT	190	0	0	0	0	0	0	0	83,747.55
GROUND	24	27,058.00	0	0	0	0	0	0	29,305.52
SECOND	0	0	33	33	6	12	39	45	31,274.83
THIRD	0	0	33	33	6	12	39	45	31,274.83
<b>TOTALS</b>	<b>214</b>	<b>27,058.00</b>	<b>66</b>	<b>66</b>	<b>12</b>	<b>24</b>	<b>78</b>	<b>90</b>	<b>175,602.73</b>

SUMMARY		AREA TOTALS		
LAND AREA IN ACRES	2.32	101,059.20		Sq. Ft.
SITE COVERAGE BY BUILDING	29.00%	29,305.52		Sq. Ft.
GARDENS & LANDSCAPE	25.24%	25,511.03		Sq. Ft.
GROUND FLOOR PARKING & PAVED AREAS	45.76%	46,242.65		Sq. Ft.
REQUIRED RETAIL PARKING 1X300 Sq Ft GROSS AREA	31	9,264.00		Sq. Ft.
OFFICE PARKING 1X300 Sq Ft	59	17,794.00		Sq. Ft.
DWELLING PARKING 1.5 PER UNIT	117			
TOTAL PARKING STALLS REQUIRED	207			
TOTAL PARKING STALLS PROPOSED	212			
ACCESSIBLE PARKING PROVIDED	7			

## PLANNING DEPARTMENT ANALYSIS

### General

The application is for a modification to site & floorplan layout, decrease apartment unit numbers from 80 to 68 units, reduce parking from 217 to 210 to be located on Esterley Tibbetts Hwy., West Bay.

### Zoning

The property is zoned Neighbourhood Commercial.

### Specific Issues

#### 1) CPA Concerns

The applicant has proposed several modifications to the previously approved mixed-use development namely the modification to combine units and reduce the approved unit count from 80 to 68 units, add storage to the basement area, add bathrooms to the commercial/retail spaces, revise the ground floor laundry / bathroom area, revise the roof top pool shape and lastly reduce the parking from the approved 217 spaces to 210 spaces. Although the development requires 207 spaces and the proposed reduction to 210 spaces is 3 more than the required amount.

The applicant has submitted revised plans clarifying the parking scenario.

The Authority should assess if the proposed modifications & reduction of parking spaces is acceptable and warrants granting planning permission.

### **SUPPLEMENTAL ANALYSIS**

As noted above in the Background section of the report, on January 17, 2024, the Authority adjourned the application and directed to the Department to clarify the parking scenario as follows:

- 1) Confirm the total required number of parking spaces
- 2) Confirm the total number of parking spaces being provided vis a vis the applicant's calculations and the Department's calculations
- 3) Confirm the specific parking spaces being deleted
- 4) Confirm whether the off-site parking spaces approved for The Grove (phase 1) still exist or if they are now included with the current application for The Grove Too

In response to the adjournment, the applicant submitted the following two letters:

#### **Letter #1**

*Planning modification (P23-1001) was submitted to the Department of Planning for review and approval. This modification was adjourned by CPA on January 17th requesting clarifications regarding parking quantities.*

*A further modification is being submitted that affects the parking count and therefore explained here as follows:*

- *Twelve (12) one-bedroom units were converted to four (4) three-bedrooms units*
- *The total number of apartments has been reduced from 80 units to 68 units*
- *The total number of bedrooms remains with a total of 90 bedrooms*
- *Parking required for 68 units at 1.5 ratio per unit gives us a total of 102 parking spaces required for the dwelling units.*
- *The total parking spaces required for the entire project is 192 stalls.*
- *Total parking spaces provided is 210 including 7 accessible parking spaces.*

*Please refer to the amended set of plans submitted along with this letter.*

*We look forward to your favorable consideration. Please do not hesitate to contact us if you have any comment.*

#### **Letter #2**

*In response to the CPA Letter of adjournment from the January 17 Board Meeting forwarded please see below the corresponding explanations to the 4 questions raised.*

- 1. Confirm the total required number of parking spaces.***

OFFICES		RETAIL	
A1	2,609.60	C1	1,530.00
A2-A	2,261.00	C1-B	1,450.00
A2-B	725.00	C2	1,486.00
B1	4,425.50	D1	2,168.00
B2-A	1,634.60	D2	2,630.00
B2-B	1,547.40	TOTAL SQ FT	<b>9,264.00</b>
B2-C	2,321.50		30.88 = <b>31 Stalls</b>
B2-D	2,269.90		
TOTAL SQ FT	<b>17,794.50</b>	1 Stall X 300 sq ft	
	59.32 = <b>59 Stalls</b>		

68 Apartment units @ 1,5 Stalls per unit = **102 Stalls**

**Total Required 31 + 59 + 102 = 192 Stalls**

2. **Confirm the total number of parking spaces being provided vis a vis the applicant's calculations and the Department's calculations:**

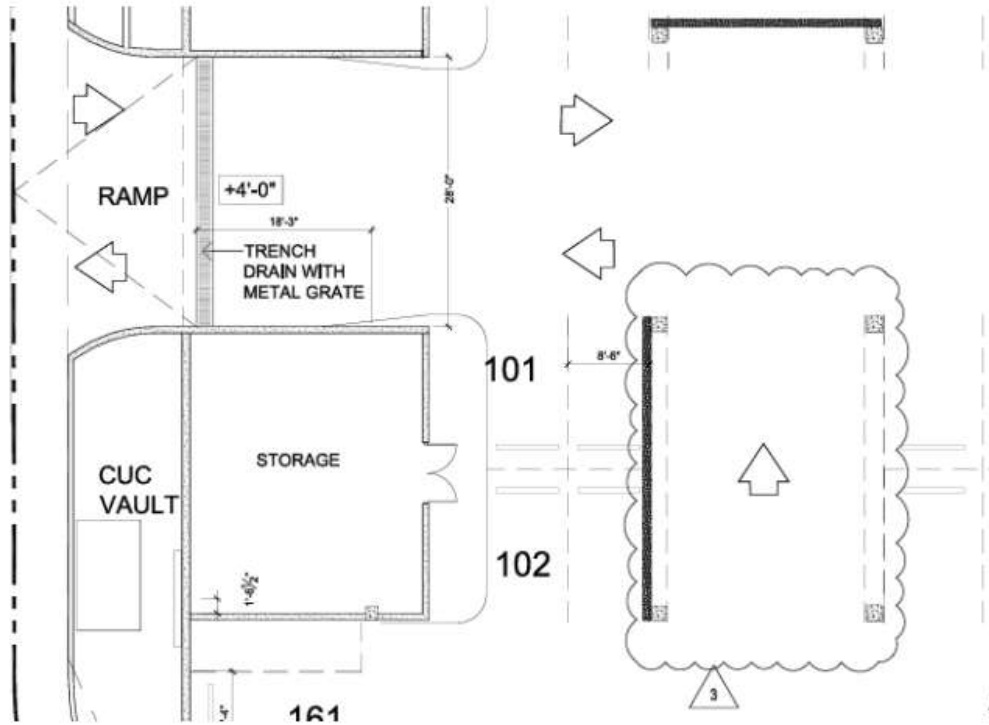
Total number of Parking stalls provided at Ground Floor	24
Total number of parking stalls provided at basement level	<u>186</u>
<b>Total number of parking stalls provided</b>	<b>210</b>

18 Additional parking stalls provided above the requirements.

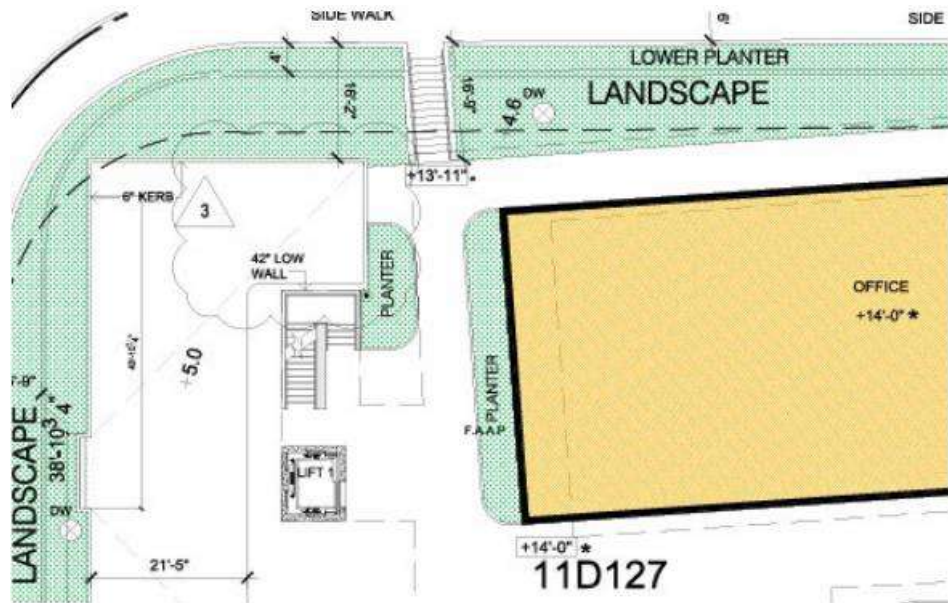
3. **Confirm the specific parking spaces being deleted**

**4 parking spaces** were deleted to permit an additional vehicular communication between isles. The clouded area below shows the location where the 4 parking spaces were deleted.

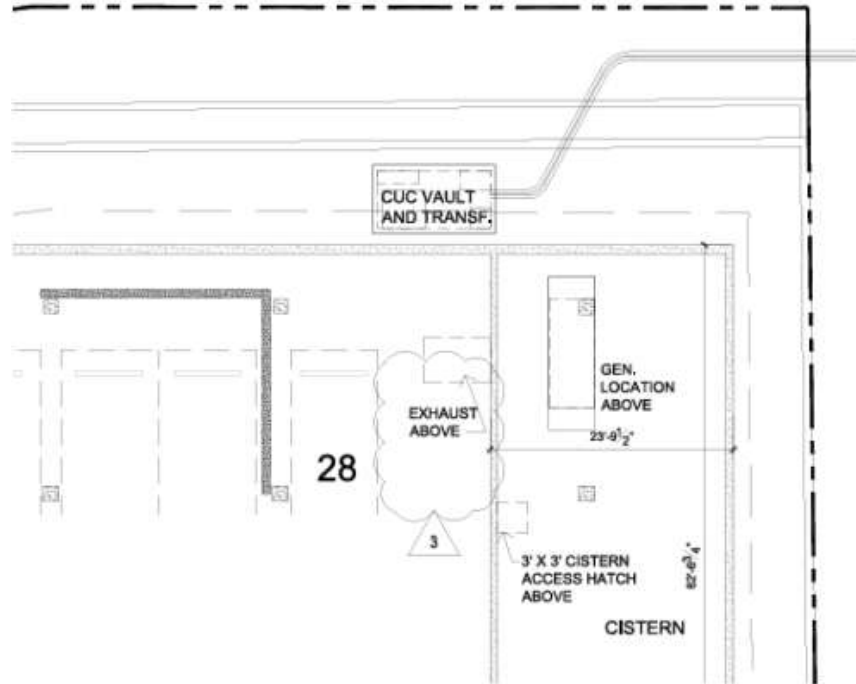
The loss of those 4 stalls changes the count on the basement from 190 to 186.



*2 parking spaces at ground level besides B1 were deleted and approved in the Planning set from February 24, 2022 (two years ago) so there was no need to cloud that area as a change.*



*1 parking space was lost at the South East corner of the basement besides the cistern to accommodate a ventilation exhaust duct*



The above count totaled a **7-parking stall reduction** coinciding with the Department’s count vis a vis ours.

**4. Confirm whether the off-site parking spaces approved for The Grove (phase 1) still exist or if they are now included with the current application for The Grove Too**

Yes, the off-site parking spaces approved for The Grove (phase 1) still at plot 11D-104 which is not related to this Project.

The Department has verified the applicant’s parking calculations as being correct: 192 parking spaces are required and 210 spaces have been provided. The applicant has also answered the remaining questions asked by the Authority.

**2.22 TAMARA BARCLAY (Platinum Crew General Maintenance Repair) Block 55A Parcel 320 (P24-0060) (\$350,000) (JS)**

Application for a house.

**FACTS**

<i>Location</i>	Rock Spring Drive, off Frank Sound Rd
<i>Zoning</i>	<b>Low Density residential</b>
<i>Notification result</i>	No objection
<i>Parcel size proposed</i>	10,000 sq ft
<i>Parcel size required</i>	10,179 sq ft
<i>Current use</i>	Proposed 3-bedroom house and shed

<i>Proposed building size</i>	1447sq ft
<i>Total building site coverage</i>	14.21%
<i>Required parking</i>	1
<i>Proposed parking</i>	1

**Decision:** It was resolved to grant planning permission, subject to the following conditions:

Condition (1) listed below shall be met before permit drawings can be submitted to the Department of Planning.

- 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 is required to apply for a Permit from the Director of Planning. Construction shall not commence prior to the issuance of a Permit.
- 3) If during construction of the building insulating concrete forms (ICFs) are used, measures such as screens or other enclosures along with vacuuming shall be put in place to ensure that any shavings or foam waste is completely captured on site and does not impact the surrounding area.
- 4) Prior to undertaking any sanding or breaking down of polystyrene as part of the construction process, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas or pollute the adjacent Marine Protected Area offshore.
- 5) Unless specifically authorized otherwise in writing by the Central Planning Authority, the Development shall be carried out strictly in accordance with the approved plans.
- 6) The applicant shall obtain a Final Certificate (of Fitness for **Occupancy**) **prior to occupying the building(s)**.

If the existing grade level does not currently provide for it, the applicant is reminded that the finished floor level of all buildings should be at least five feet (5') above mean sea level.

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) Per the Development and Planning Act s7 consultation memorandum from the Department of Environment, the site has been man-modified. The Authority grappled with the criteria of s2(a-1) if the NCA and determined that it is unlikely that the application will result in adverse effects on the environment generally or on any natural resource and therefore, no further referral to the National Conservation Council under the National Conservation Act s41(3) is required.

- 3) The Authority considered the application and determined that planning permission would be granted as the application complies with the Development and Planning Regulations (2022 Revision).

### **AGENCY COMMENTS**

The Authority received and considered comments 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). This review is provided in accordance with Section 41(3) of the National Conservation Act and the Section 41 Guidance Notes issued by the National Conservation Council.*

#### **Site Overview**

*The site is man-modified and had previously consisted of primary seasonally flooded mangrove habitat vegetation as shown in Figure 1.*



*Figure 1: Aerial Imagery showing the application site (outlined in red) in 2021 (Left) and in 2023 (Right), (Imagery Source: 2021 UKHO and 2023 Lands and Survey)*

#### **General Comments**

*Mangrove forests are a critical part of our natural environment, providing several ecosystem services which include assisting to mitigate the effects of climate change. As one of the most productive terrestrial ecosystems, mangrove wetlands are extremely biodiverse and provide habitat and food for an immense variety of species. They also function as natural sponges that trap and slowly release surface water. Inland wetlands in urban areas are particularly valuable, counteracting the greatly increased rate and volume of surface-water runoff from areas of hardstanding and buildings. Trees, root mats, and other wetland vegetation also slow the speed and distribution of stormwater. Therefore, given that the site has been completely cleared, there is no opportunity to retain any mangrove vegetation which would have been useful in order to assist with drainage and storm water management of the site.*



### ***Advice to the Applicant***

*We recommend that the applicant incorporates Sustainable Drainage Systems (SuDS) into the stormwater management plan for the site. SuDs are drainage solutions that provide an alternative to the direct channeling of surface water through pipes and deep wells. By mimicking natural drainage regimes, SuDS aim to reduce surface water flooding, improve water quality and enhance the amenity and biodiversity value of the environment. SuDS achieve this by lowering flow rates, increasing water storage capacity, and reducing the transport of pollution to the water environment. Measures could include permeable and sustainable materials within the parking area. The applicant may also wish to consider leaving some areas of landscaping at a lower grade than the built footprint and using porous or permeable surfaces in areas of hard standing (such as the driveway) to allow for rainwater infiltration and assist with stormwater management.*

*The DoE also recommends that native vegetation including mangrove species are used where possible. Native species are best suited for the conditions of the site, including the temperature and amount of rainfall. They are climate-appropriate and require less maintenance and irrigation. Landscaping with native vegetation also provides habitat and food for native fauna such as birds and butterflies, promoting biodiversity and providing valuable ecosystem services.*

### ***Advice to the Central Planning Authority***

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

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

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

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

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application site is located on the Off of Rock Spring Drive, Bodden Town

The application is for the construction of a 3-bedroom house and shed

**Zoning**

The property is zoned Low Density residential. The application complies with all relevant Development and Planning Regulations, but the Authority will have to consider the 41(3) recommendation.

**2.23 VICTOR THOMPSON (GMJ HOME PLANS LTD) Block 24E Parcel 228 (P23-1178) (\$325,000) (JS)**

Application for a duplex.

**FACTS**

<i>Location</i>	Marina Drive in Prospect
<i>Zoning</i>	<b>Low Density Residential</b>
<i>Notification Result</i>	No Objections
<i>Parcel size required</i>	12,500 sq. ft.
<i>Parcel size proposed</i>	10,092 sq. ft.
<i>Site coverage allowed</i>	30 %
<i>Proposed site coverage</i>	16.11 %
<i>Current use</i>	Vacant
<i>Proposed use</i>	Duplex

**Decision:** It was resolved to grant planning permission, subject to the following conditions:  
Condition (1) listed below shall be met before permit drawings can be submitted to the Department of Planning.

- 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 is required to apply for a Permit from the Director of Planning. Construction shall not commence prior to the issuance of a Permit.
- 3) If during construction of the building insulating concrete forms (ICFs) are used, measures such as screens or other enclosures along with vacuuming shall be put in place to ensure that any shavings or foam waste is completely captured on site and does not impact the surrounding area.
- 4) Prior to undertaking any sanding or breaking down of polystyrene as part of the construction process, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene

debris is completely captured on-site and does not impact the surrounding areas or pollute the adjacent Marine Protected Area offshore.

- 5) Unless specifically authorized otherwise in writing by the Central Planning Authority, the Development shall be carried out strictly in accordance with the approved plans.
- 6) The applicant shall obtain a Final Certificate (of Fitness for **Occupancy**) **prior to occupying the building(s)**.

If the existing grade level does not currently provide for it, the applicant is reminded that the finished floor level of all buildings should be at least five feet (5') above mean sea level.

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) With the exception of the lot size, which is addressed below, the application complies with the Development and Planning Regulations (2022 Revision).
- 3) The proposed application does not comply with the minimum required lot size per Regulation 9(8)(e) of the Development and Planning Regulations (2022 Revision). The Authority is of the opinion that pursuant to Regulation 8(13)(b) there is sufficient reason and exceptional circumstance to allow the lesser lot size as follows:
  - a) The characteristics of the proposed development are consistent with the character of the surrounding area; and
  - b) 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.

## **APPLICANTS LETTER**

We write on behalf of the applicant, Mr. Victor Thompson with regards to the following variance:

- A lot size variance – where the subject parcel is registered as 0.2317 acres or 10,092.85 sqft which is 2,407.15 sqft smaller than the required 12,500 sqft for a duplex development in areas zoned Low Density Residential.

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.
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 precedent for duplexes on a lot size less than required already exist in the community of prospect. There are duplex developments either side of the subject property on parcels 24E67 (0.2312 Acres) and 24E229 (0.2525 Acres). Similar developments are also nearby on parcels 24E219 (0.2525 Acres) and 24E236 (0.2310 Acres).
4. Although the lot is below the prescribed lot size for a duplex, the development proposed

**PLANNING DEPARTMENT ANALYSIS**

**General**

The subject parcel is located on Marina Drive in Prospect.

The application is for an extension for a Duplex.

Adjacent landowners were notified by registered mail and no objections have been received.

**Zoning**

The property is zoned Low Density Residential.

**Specific Issues**

**1) Variance required for lot size (10,092 sq. ft vs 12,500 sq. ft)**

Regulation 9(8)(e) requires a minimum lot size for each duplex is 12,500 sq. ft

The Authority should consider and discuss the request for a variance. As noted by the applicant, there are several other duplexes on similar size lots in the surrounding area.

**2.24 CHRISTIAN OSHANE (Tropical Architectural Group Ltd) Block 56C Parcel 101 (P23-0878) (\$225,000) (AS)**

Application for a house.

**FACTS**

<i>Location</i>	Noel Drive & Bracken Cl
<i>Zoning</i>	LDR
<i>Notice Results</i>	No objectors
<i>Parcel Size proposed</i>	.21 AC (9,147 sq. ft.)
<i>Parcel size required</i>	10,000 sq ft
<i>Current Use:</i>	Vacant
<i>Proposed footprint:</i>	900 sq ft
<i>Bldg Size:</i>	900 sq ft
<i>Site Coverage:</i>	9.8%

**Decision:** It was resolved to grant planning permission, subject to the following conditions:  
Condition (1) listed below shall be met before permit drawings can be submitted to the Department of Planning.

- 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 is required to apply for a Permit from the Director of Planning. Construction shall not commence prior to the issuance of a Permit.
- 3) If during construction of the building insulating concrete forms (ICFs) are used, measures such as screens or other enclosures along with vacuuming shall be put in place to ensure that any shavings or foam waste is completely captured on site and does not impact the surrounding area.
- 4) Prior to undertaking any sanding or breaking down of polystyrene as part of the construction process, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas or pollute the adjacent Marine Protected Area offshore.
- 5) Unless specifically authorized otherwise in writing by the Central Planning Authority, the Development shall be carried out strictly in accordance with the approved plans.
- 6) The applicant shall obtain a Final Certificate (of Fitness for **Occupancy**) **prior to occupying the building(s)**.

If the existing grade level does not currently provide for it, the applicant is reminded that the finished floor level of all buildings should be at least five feet (5') above mean sea level.

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) With the exception of the lot size, which is addressed below, the application complies with the Development and Planning Regulations (2022 Revision).
- 3) The proposed application does not comply with the minimum required lot size per Regulation 9(8)(d) of the Development and Planning Regulations (2022 Revision). The Authority is of the opinion that pursuant to Regulation 8(13)(b) there is sufficient reason and exceptional circumstance to allow the lesser lot size as follows:
  - a) The characteristics of the proposed development are consistent with the character of the surrounding area; and
  - b) 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.

## **AGENCY COMMENTS:**

The Authority received and considered comments 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).*

#### *Site Overview*

*The site is man-modified and of limited ecological value.*

#### *Advice to the Applicant*

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

*We also recommend that the applicant incorporates Sustainable Drainage Systems (SuDS) into the stormwater management plan for the site. SuDS are drainage solutions that provide an alternative to the direct channeling of surface water through pipes and deep wells. By mimicking natural drainage regimes, SuDS aim to reduce surface water flooding, improve water quality and enhance the amenity and biodiversity value of the environment. SuDS achieve this by lowering flow rates, increasing water storage capacity, and reducing the transport of pollution to the water environment. Measures could include permeable and sustainable materials within the parking area. The applicant may also wish to consider leaving some areas of landscaping at the existing grade and using porous or permeable surfaces in areas of hardstanding to allow for rainwater infiltration and assist with stormwater management.*

#### *Advice to the Central Planning Authority*

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

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

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

## **APPLICANT'S LETTER**

*Further to the application submitted in relation to the above-referenced Project, we hereby request for Lot Size Variance which requires a minimum of 10,000 sqft lot area for a single detached house in a Low Density Residential Zone.*

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

*1) Under Regulation 8 (13)(d), the adjoining property owners have been notified of the application.*

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

*a. The Site Lot Area is 9,327. square foot or 0.21 acre, which Planning Regulation 9 (8)(c) requires a minimum of 10,000 sqft for a Single Detached House. While the current lot is short of approximately 673 sqft to meet the requirement, it was parceled and sold as such and is best suited for residential construction.*

*b. The owner is only proposing a single detached and single-story residence at merely 900 sqft of floor area and does not obstruct, disturb, or disrupt the community in any way.*

*We look forward to the CPA board's favorable consideration of this request for variances. If you require additional information or further clarification, please don't hesitate to contact us at the numbers & and e-mail below. Thank you and God bless."*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for a two (2) bedroom house.

### **Zoning**

The property is zoned Low Density Residential.

### **Specific Issues**

#### **1) Lot size**

Pursuant to Section 9 (8) (d) of the Development and Planning Regulations (2022 Revision) the minimum lot size for a house is 10,000 sq ft. The subject lot size is 9,147 sq ft. The lot has existed since 1982 and Regulation 22 states the Authority may permit building of dwelling units on a lot size of which is below the prescribed minimum and must so permit if the lot existed as a separate lot on the 28<sup>th</sup> day of August, 1977.

**2.25 ROGER SUSINI (LSG DESIGNS) Block 22D Parcel 385 (P24-0065) (\$685,000) (JS)**

Application for a house.

**FACTS**

<i>Location</i>	Consort Quays, Red Bay
<i>Zoning</i>	<b>Low Density residential</b>
<i>Notification result</i>	No objection
<i>Parcel size proposed</i>	10,058 sq ft
<i>Parcel size required</i>	10,000 sq ft
<i>Current use</i>	vacant
<i>Proposed building size</i>	2500sq ft
<i>Total building site coverage</i>	24.85%
<i>Required parking</i>	1
<i>Proposed parking</i>	1

**Decision:** It was resolved to grant planning permission, subject to the following conditions:

Condition (1) listed below shall be met before permit drawings can be submitted to the Department of Planning.

- 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 is required to apply for a Permit from the Director of Planning. Construction shall not commence prior to the issuance of a Permit.
- 3) If during construction of the building insulating concrete forms (ICFs) are used, measures such as screens or other enclosures along with vacuuming shall be put in place to ensure that any shavings or foam waste is completely captured on site and does not impact the surrounding area.
- 4) Prior to undertaking any sanding or breaking down of polystyrene as part of the construction process, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas or pollute the adjacent Marine Protected Area offshore.
- 5) Unless specifically authorized otherwise in writing by the Central Planning Authority, the Development shall be carried out strictly in accordance with the approved plans.
- 6) All construction materials shall be stockpiled at a minimum of 20 feet from the canal edge to reduce the possibility of run-off washing material and debris into the canal causing turbidity and impacting water quality.



- 7) The applicant shall obtain a Final Certificate (of Fitness for **Occupancy**) **prior to occupying the building(s)**.

If the existing grade level does not currently provide for it, the applicant is reminded that the finished floor level of all buildings should be at least seven feet (7') above mean sea level.

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) Per the Development and Planning Act s7 consultation memorandum from the Department of Environment, the site has been man-modified. The Authority grappled with the criteria of s2(a-1) if the NCA and determined that it is unlikely that the application will result in adverse effects on the environment generally or on any natural resource and therefore, no further referral to the National Conservation Council under the National Conservation Act s41(3) is required.
- 3) The Authority considered the application and determined that planning permission would be granted as the application complies with the Development and Planning Regulations (2022 Revision).

### **AGENCY COMMENTS**

The Authority received and considered comments 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). This review is provided in accordance with Section 41(3) of the National Conservation Act and the Section 41 Guidance Notes issued by the National Conservation Council.*

#### **Site Overview**

*The application site is man-modified and of limited ecological value.*

#### **Advice to Applicant**

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

### ***Advice to Central Planning Authority***

*Best management practices should be adhered to during construction to reduce impacts on the environment and the canal, including impacts to water quality. Materials should be stockpiled away from the canal's edge to avoid run-off into the canal. Control measures should be put in place to address pollution from expanded polystyrene (EPS) beads on construction sites, for example those used in insulating concrete forms (ICF). Polystyrene is not biodegradable, and the EPS beads can be consumed by wildlife when it enters the food chain. These beads are very difficult to remove once they enter the environment and they do not naturally break down.*

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

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

- 1. All construction materials shall be stockpiled at a minimum of 20 feet from the canal edge to reduce the possibility of run-off washing material and debris into the canal causing turbidity and impacting water quality.*
- 2. If the construction uses insulating concrete forms (ICFs) or other polystyrene materials, measures (such as screens or other enclosures along with vacuuming) shall be put in place to ensure that any shavings, foam waste or polystyrene debris is completely captured on-site and does not impact the surrounding areas or pollute the adjacent marine environment.*

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application site is located on Consort Quays, Red Bay

The application is for the construction of a 4-bedroom house with pool.

### **Zoning**

The property is zoned Low Density Residential. The application complies with all relevant Development and Planning Regulations, but the Authority will have to consider the 41(3) recommendation.

## **2.26 FITZGERALD WALKER (TSC Architecture) Block 37E Parcel 261 (P23-1174) (\$66,000) (AS)**

Application for a pool & cabana.

### **FACTS**

*Location*

Yellow Dorcus Dr

<i>Zoning</i>	LDR
<i>Parcel Size</i>	.2309 AC (10,058 sq. ft.)
<i>Current Use:</i>	house
<i>Proposed footprint:</i>	121 sq ft
<i>Existing Footprint:</i>	2,926.87 sq ft
<i>Site Coverage:</i>	30.29%

**BACKGROUND**

November 1, 2019 – an application for a house was administratively approved.

**Decision:** It was resolved to grant planning permission, **subject to the following conditions:**

Condition (1) listed below shall be met before permit drawings can be submitted to the Department of Planning.

- 1) The construction drawings for the proposed swimming pool filtration system 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 filtration system is constructed in accordance with the submitted plans it will conform to public health requirements.
- 2) The applicant is required to apply for a Permit from the Director of Planning. Construction shall not commence prior to the issuance of a Permit.
- 3) 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.
- 4) Unless specifically authorized otherwise in writing by the Central Planning Authority, the Development shall be carried out strictly in accordance with the approved plans.
- 5) The applicant shall obtain a Certificate of Completion **prior to the utilization of the pool.**

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) With the exception of the site coverage, which is addressed below, the application complies with the Development and Planning Regulations (2022 Revision).
- 3) The proposed application does not comply with the maximum allowable site coverage per Regulation 9(8)(h) of the Development and Planning Regulations (2022 Revision).

The Authority is of the opinion that pursuant to Regulation 8(13)(b) there is sufficient reason and exceptional circumstance to allow the additional site coverage as follows:

- a) The characteristics of the proposed development are consistent with the character of the surrounding area; and
- b) 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.

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The application is for a pool & cabana. The cabana is 121 sq ft. The existing house is 2,926.87 sq ft.

### **Zoning**

The property is zoned Low Density Residential.

### **Specific Issue**

#### **1) Site coverage**

Pursuant to Section 9 (8) (h) of the Development and Planning Regulations (2022 Revision) the maximum site coverage is 30% of the lot size. The proposed site coverage is 30.29%.

## **2.27 JASON EBANKS (Abernethy & Associates) Block 43D Parcel 25 (P24-0028) (\$1,000) (NP)**

Application for 3 lot land strata subdivision.

### **FACTS**

<i>Location</i>	Lakeview Drive, Bodden Town
<i>Zoning</i>	<b>Low Density Residential</b>
<i>Notification Results</i>	No Objections
<i>Parcel size</i>	11,225.4 sq ft.
<i>Current use</i>	Three Townhouses

### **BACKGROUND**

March 16, 2022 (**CPA/8/22; Item 2.5**) – The Authority granted planning permission for three townhouses (P21-1083).

January 26, 2023 (**Administrative Approval**) – Planning permission was granted to relocate the location of the building on the property (P22-1171).

**Decision:** It was resolved to grant planning permission, subject to the following condition:

- 1) The surveyor's final drawing **shall include the surveyed dimensions of all lots and must show all required easements** and shall be submitted to the Director of Planning for approval prior to the survey being registered.

Reason for the decision:

- 1) Per Regulation 9(8)(ja) of the Development and Planning Regulations (2022 Revision), the Authority deems the minimum lot size, lot width, setbacks and site coverage to be as shown on the submitted plans.

### **AGENCY COMMENTS**

The Authority received and considered comments from the Department of Environment, Water Authority and National Roads Authority.

#### **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). This review is provided in accordance with Section 41(3) of the National Conservation Act and the Section 41 Guidance Notes issued by the National Conservation Council. The Department of Environment confirms that we have no comments at this time.*

#### **Water Authority Cayman**

*Please be advised that the Water Authority's previous requirements for this development (Plan Ref: i101421-163652, P21-1083) are still applicable.*

#### **Wastewater Treatment**

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

#### **Water Supply**

*The proposed development site is located within the Water Authority's piped water supply area, however, please be advised that the connection of a proposed development to the Water Authority's piped water supply may require an extension.*

- *Extensions in private roads are done at the owner's expense and the timing of any pipeline extension is at the sole discretion of the Water Authority.*
- *The developer shall contact The Water Authority's Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the piped water supply.*

- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- *The developer shall install the water supply infrastructure within the site, under the Water Authority’s supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority’s web page: <http://www.waterauthority.ky/water-infrastructure>.*

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

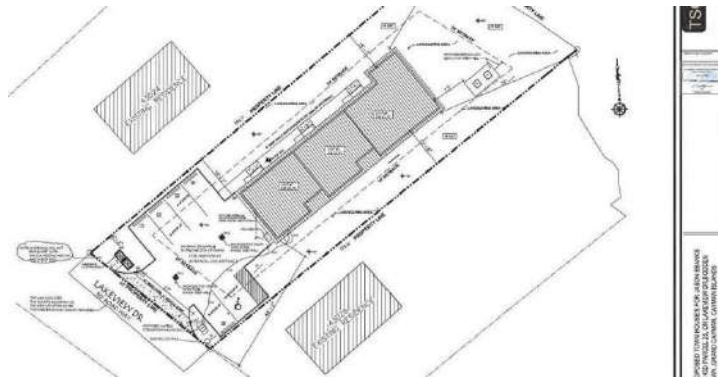
**National Roads Authority**

*The NRA has no objections or concerns regarding the raw land strata.*

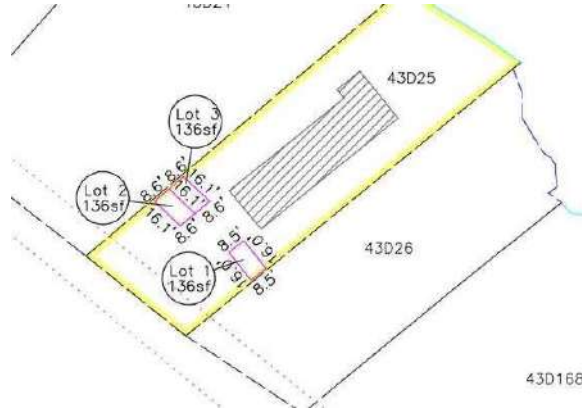
**APPLICANTS COMMENTS**

*The application is located in a Low Density Residential zone. Consequently, Regulation 9(8) is applicable requiring a minimum lot size of 10,000 sf and minimum lot width of 80 feet.*

*On the 16th March 2022, planning permission (P21-1083) was granted for apartments (CPA/08/22; item 2.5) subject to the submission of revised plans detailing 3 apartments instead of the 4 originally applied for. Revised plans were subsequently submitted and stamped approved for 3 apartments supported by 6 parking spaces:*



The current application (P24-0028) seeks permission for 3 raw land strata lots in the parking area:



Proposed lots 1-3 directly correlate with parking spaces established under P21-1083, the remaining 3 parking spaces would form visitor parking.

The purpose of the lots is to correspond with the triplex to enable a strata to be registered. The proposed lots 1-3 are 136 sf and 8.5' x 16.1'.

We are asking the Central Planning Authority to use their discretion, as provided under Regulation 9(8)(ja), to permit the lot sizes and lot widths.

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The subject property is located on Lakeview Drive in Bodden Town.

The property is currently developed with three townhouses.

The proposal is to create 3 individual strata lots with 136 square feet each (the parking spaces) and one common strata lot.

Affected parcels were notified by Registered Mail and no objections have been received to date.

### **Zoning**

The property is zoned Low Density Residential.

### **Specific Issues**

#### **1) Lot Size & Lot Width**

The individual strata lots would not satisfy the minimum lot size requirements of the LDR zone but Regulation 9(8)(ja) states that “the minimum lot size, lot width, setbacks and site coverage for land strata lots and volumetric parcels which are intended to allow the conveyance of dwelling units in an approved duplex, apartment building or townhouse shall be at the discretion of the Authority”.

The Authority should discuss if lot size and lot width variances are warranted in this instance.

**2.28 HERITAGE HOLDINGS Block 20C Parcel 86 (P23-0900) (\$8,000) (NP)**

Application for a 6' fence.

**FACTS**

*Location* Airport Connector Road, George Town

*Zoning* **Marine Commercial**

*Parcel size proposed* 3.283 acres

*Parcel size required* 20,000 sq. ft.

*Current use* Vacant

**BACKGROUND**

January 17, 2024 (CPA/03/24; item 2.26) – the application was adjourned in order to consult with DOER per s7 of the DPA

**Decision:** It was resolved to grant planning permission, subject to the following condition:

- 1) Unless specifically authorized otherwise in writing by the Central Planning Authority, the Development shall be carried out strictly in accordance with the approved plans.

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) The Authority considered the application and determined that planning permission would be granted as the application complies with the Development and Planning Regulations (2022 Revision). Further, the Authority is satisfied that the fence height is in keeping with the character of the area.

**AGENCY COMMENTS**

The Authority received and considered comments 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).*

*We note that the applicant received approval to clear the area to be used for storage under a previous application (P22-0575, decision letter CPA/27/22; Item 2.11).*

*Mangroves are Part 2 Schedule 1 protected species under the National Conservation Act (2013) with an adopted Mangrove Conservation Plan (2020). It is an offence to remove mangroves unless permission is explicitly sought to remove them either through a coastal*



*works permit, planning permission or a National Conservation Council Section 20 permit. Mangroves outside of the approved clearing area must be retained in accordance with the Species Conservation Plan for Mangroves (2020) under the National Conservation Act (2013).*

**PLANNING DEPARTMENT ANALYSIS**

**General**

The applicant is proposing to construct a new 6 foot high fence along the western frontage (Airport Connector Road frontage) of the subject lands.

The property is presently vacant.

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

**Zoning**

The property is zoned Marine Commercial.

**Specific Issue**

1) Proposed fence height of 6 feet whereas 4 feet is the permitted height.

The applicant’s agent has indicated on the plans that the fence is necessary to protect equipment that may be used in the future on the subject lands.

**2.29 SUNRISE LANDING (Whittaker & Watler) Block 27C Parcel 745 (P23-0779) (\$28,000) (NP)**

Application for a 30” wall.

**FACTS**

<i>Location</i>	Tarpon Island Drive
<i>Zoning</i>	<b>Low Density Residential</b>
<i>Notification result</i>	Not Required
<i>Current use</i>	Subdivision

**Decision:** It was resolved to grant planning permission, subject to the following condition:

- 1) Unless specifically authorized otherwise in writing by the Central Planning Authority, the Development shall be carried out strictly in accordance with the approved plans.

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) The Authority considered the application and determined that planning permission would be granted as the application complies with the Development and Planning Regulations (2022 Revision).

**PLANNING DEPARTMENT ANALYSIS**

**General**

The subject parcel is located on Tarpon Island Drive.

The applicant is seeking planning permission for a 30” high wall along the north side of the existing fence and gates.

Notices to adjacent landowners were not required in this instance.

**Zoning**

The property is zoned Low Density Residential.

**2.30 CAYMAN SHORES DEVELOPMENT LTD (Dart) Block 12D Parcel 95 (P24-0040) (\$15,000) (NP)**

Application for a change of use from retail to restaurant.

**FACTS**

<i>Location</i>	60 Nexus Way, Camana Bay
<i>Zoning</i>	General Commercial
<i>Current use</i>	Mixed Use Office and Retail Building
<i>Proposed Use</i>	Restaurant

**Decision:** It was resolved to grant planning permission, subject to the following conditions:

- 1) The applicant is required to apply for a Permit from the Director of Planning. Construction shall not commence prior to the issuance of a Permit.
- 2) Unless specifically authorized otherwise in writing by the Central Planning Authority, the Development shall be carried out strictly in accordance with the approved plans.
- 3) The applicant shall obtain a Final Certificate (of Fitness for **Occupancy**) **prior to occupying the building(s)**.

Reasons for the decision:

- 1) The Authority considered all information contained in the Agenda including agency comments, any objections and any other representations made pertaining to the application.
- 2) The Authority considered the application and determined that planning permission would be granted as the application complies with the Development and Planning Regulations (2022 Revision).

## **PLANNING DEPARTMENT ANALYSIS**

### **General**

The proposed change of use applies to the ground floor of 60 Nexus Way, a recently completed mixed use retail and office building. The ground floor was approved with a combination of retail and restaurant uses. The application is to change 1,435 square feet of retail space on the ground floor to a restaurant use. The total floor area of the restaurant would be 3,425 square feet if the change of use application is approved.

### **Zoning**

The property is zoned General Commercial.

## **3.0 DEVELOPMENT PLAN MATTERS**

## **4.0 PLANNING APPEAL MATTERS**

## **5.0 MATTERS FROM THE DIRECTOR OF PLANNING**

### **5.1 RCIPS Block 20E Parcel 356**

The Authority determined to approve the request for a standalone electrical service for the lights and cameras used at the vehicle storage compound.

## **5.2 MINISTRY PAHITD**

The Authority considered a proposal to erect two billboard type signs advertising various projects being undertaken by the Ministry. The Ministry would also like to erect the same billboard signage in each district, also informing the public of ongoing Ministry projects. The Authority determined that these signs are intended to increase public awareness and are exempt from needing planning permission per Section 13(3)(g) of the Development and Planning Act.

## **5.3 THIN WATER TANKS**

The Authority considered a new water storage tank and determined that if they are used to create a fence/wall or are not affixed to a building wall, then they need planning permission.

## **6.0 CPA MEMBERS INFORMATION/DISCUSSION**

### **6.1 DEVELOPMENT PLAN REVIEW**

The members acknowledged that version 5.1 of the Development Plan Planning Statement had been approved.

The meeting adjourned at 5:50pm. The next regular meeting of the Central Planning Authority is scheduled for *Wednesday, March 27, 2024 at 10:00 a.m.* in in Conference Room 1038, 1<sup>st</sup> floor, Government Administration Building.



**Ian Pairaudeau**  
Chairman



**Haroon L. Pandohie**  
Executive Secretary

## Appendix A

May 6, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

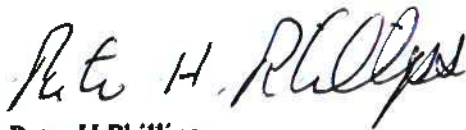
- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including the Palms (my home). When the Proprietors of The Palms acquired their homes, they invested not only in the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
  - (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
  - (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to the Palms property or its residents is also unstated and unknown.
  - (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at the Palms and Silver Sands that are adjacent to Aqua Bay.
-

- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the west side of our property, and on the east side of the Silver Sands property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at The Palms and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,



Peter H Phillips  
Owner  
The Palms Condominiums – Unit 15  
Block / Parcel 5D3H12

717 773-8951  
pphillips@phillipsmss.com



KY1-1003  
525 5546

6<sup>th</sup> May 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request  
Block/Parcels SD4, 5C234**

Dear Sirs,

As the registered owner of #1 Silver Sands, I object to the CPA's approval of the above referenced project for the following reasons:

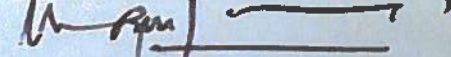
- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
- (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
- (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.
- (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.

- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project.

I strongly urge you to reject the Application as submitted.

Yours faithfully,



Charles Jennings →

Owner, #1 Silver Sands

May 4, 2023

Director of Planning

Central Planning Department

P.O. Box 113

Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL- ([Planning.Dept@gov.ky](mailto:Planning.Dept@gov.ky))

Sender's email: [Bill@wmoerbe.com](mailto:Bill@wmoerbe.com)

Owner of Block and Parcel: 5C191H31 Silversands above referenced project (Aqua Bay Redevelopment Request Block Parcels 5D4, 5C234).

The adverse impact on the adjacent neighbors cannot be overstated. Our Unit 31 and in Silversands is only approximately 60' to the west of the proposed 10 story project. There will be approximately 2 years of unhealthy dust, excessive noise pollution, hazardous conditions from heavy equipment to include cranes operating near the neighbors to the east and west of this project. The right to quiet enjoyment will be placed on hold for this demolition and construction phases for 2 years. All this is on the heels of owners not having practical access to their properties in 2020 and 2021

There appears to be no Environmental Impact Study on the proposed project available to us. This would address my concerns related to soil conditions, impact to the beach of this section of Seven Mile Beach, sinks holes that appeared during the earthquake in 2020, and the impact to the Turtle Friendly Project that has made tremendous progress during the past years. The environmental impact study should also include assessment of the potential beachside retaining wall.

The liability insurance coverage may be grossly inadequate in the event there are significant unknown / unplanned impacts to neighboring properties.

The long-term impact items include traffic safety conditions related to ingress/egress of the Aqua Bay project that will increase the traffic load approximately 40% for Aqua Bay property. This property and adjacent properties are located on a "blind curve" on West Bay Road that are currently at a dangerous level all hours of the day. The safety of residents and guests walking across this road to the parking area should be assessed. This study would certainly have assessments on the proposed beachfront retaining wall also.

There also appears to be limited, if any, statements regarding the approximately 2-year impact to the viability of the rental pool programs by neighboring properties. The viability of those rental properties would be significantly impacted and the employment of the Cayman workers supporting those programs at risk.

---

Sincerely,

William and Debra Moerbe

Unit 31 Silversands

PO Box 752  
Grand Cayman KY1-1303  
Cayman Islands

May 8, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
  - (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
  - (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.
  - (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
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- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

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Please advise if you have any questions or need further information.

Sincerely,

*Suzanne Jensen*

*Stuart Clark*

Suzanne Jensen  
Silver Sands #22  
Block and Parcel 5C191H22

Stuart Clark

**BONNIE E. HIBBERT  
6019 STONES THROW RD.  
HOUSTON, TX 77057  
U.S.A.**

May 8, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

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Please advise if you have any questions or need further information.

Sincerely,



Bonnie E. Hibbert  
Silver Sands #26  
Block and Parcel 5C191H26  
713-962-4733



May 8, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

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Please advise if you have any questions or need further information.

Sincerely,



Luc Maiche  
Joint Proprietor  
The Palms Condominiums – Unit 11  
Block / Parcel 5D3H11

(828) 290-0624  
[maichebusiness@hotmail.com](mailto:maichebusiness@hotmail.com)

May 8, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including the Palms (my home). When the Proprietors of The Palms acquired their homes, they invested not only in the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
  - (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
  - (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to the Palms property or its residents is also unstated and unknown.
  - (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at the Palms and Silver Sands that are adjacent to Aqua Bay.
-

- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the west side of our property, and on the east side of the Silver Sands property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at The Palms and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,



Elizabeth W Maiche  
Joint Proprietor  
The Palms Condominiums – Unit 11  
Block / Parcel 5D 3H11

(828) 699-5076

[LizMaiche@hotmail.com](mailto:LizMaiche@hotmail.com)

May 8, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P.O. Box 113  
Grand Cayman, KY1-9000, Cayman Islands

VIA EMAIL ([planning.dept@gov.ky](mailto:planning.dept@gov.ky))

**Re: Blocks/Parcels 5D4 and 5C234  
Aqua Bay Redevelopment Plan**

Dear Sir,

Please accept this letter as notification of my objection to the above-noted application for planning permission submitted by Brian Butler for Blocks/Parcels 5D4 and 5C234. I am an adjacent property owner and, while I have not yet received my required, formal notification of the Notice of Application for Planning Permission, I want to ensure that my objections are received in a timely manner. Many of our owners have not received formal notification to date and I respectfully request consideration be given to an extension to the objection timeline to allow all affected owners an opportunity to review and respond in a detailed manner.

My objections centre around the inappropriate size of the proposed building relative to the size of the property and the style of the surrounding complexes, and the negative environmental impacts of the proposed development. I have outlined my detailed concerns below.

1. While the proposal is within the site coverage restriction when excluding paved areas, it is clear from the submission that the mass and scale of the proposed redevelopment will leave the property looking overdeveloped and out of alignment with the neighbouring complexes and private homes. The property is not a large parcel, particularly when compared to neighbouring complexes, and the development proposal is not taking that into consideration appropriately. My specific objections include:
    - a. The proposed number of units (38) exceeds the maximum allowed for the property size (34.5).
-

- b. **Site coverage will exceed maximum when paved areas are included, leaving minimal areas for green space and natural landscaping. This will result in a significant change in the character of the parcel/block along this north end of the beach.**
  - c. **The driveways on either side of the property are extremely close to the neighbouring complexes with insufficient proposed landscaping to mitigate increased noise, light and exhaust fumes. The proposed location of the driveways basically puts a road right beside each of the neighbouring properties with no space to mitigate the impact.**
  - d. **Entrances and exits from the property are too close to the neighbouring properties and will create traffic and safety concerns,**
  - e. **The location and size of the building will disrupt the horizon view as you travel the north end of the beach and further reduce views of the beach from the road side. The building will create another literal and figurative barrier to the beach.**
  - f. **The height of the proposed building will create a negative visual impact for neighbouring properties and negatively impact daylight/sunlight exposure.**
  - g. **The raised pool deck and significant size of the pool is not in line with surrounding properties and well out of proportion to the size of the property, leaving little to no green space on the beach front side. The steps down to the beach create a safety hazard from a jumping and tripping perspective.**
  - h. **The beach set back of 50 feet is not sufficient to adequately support the proposed development and the increased number of residents/guests.**
  - i. **The proposed parking across the street will create significant traffic and safety concerns, particularly when the redevelopment will have increased visitors who may not be familiar with local left side driving.**
2. **The mass and scale of the proposed development raises significant environmental concerns and a full review of the potential impacts by the Department of Environment should be completed. My objections are related to the following specific concerns:**
- a. **Significant change to the property, in particular the proposed underground parking and extensive paving of the property, raises concerns on the impact of stormwater flows and they need to be addressed for all the impacted properties.**
  - b. **The pool deck, at well over 90 feet, has a retaining wall almost the full length of the property on the beach front. This proposed retaining wall, coupled with the proposed 50 feet setback, will likely have a significant impact on the beach profile for Aqua Bay and all the surrounding properties. We have all witnessed the profoundly negative impact on the beach of retaining walls and insufficient setbacks and the one proposed in this application is unacceptable and irresponsible.**
  - c. **The proposal includes the removal of the existing beach front pool which will have implications to the beach profile, both in the removal and how it will be filled.**
  - d. **The beach property is a significant turtle nesting location and the size of the proposed development, the proposed destruction of the existing structures and**

**beach front pool, and the multiple years of heavy construction will have a negative impact on the turtle nesting. Any development plan needs to consider appropriate modifications to support the turtle population.**

**In addition to the above objections, I have significant concerns related to negative impacts to our property due to the scale of this potential construction project, in terms of size and likely timeline. Given how close this construction will be to our property, noise, pollution (air and ocean), potential for damage to our property, as well as negative impact on our use/enjoyment of our property are real concerns and need to be addressed as part of any redevelopment plan.**

**Thank you for your consideration. Please advise if you have any questions or require any additional information.**

**Sincerely,**



**Gale Lockbaum  
(galelockbaum@gmail.com)**

**Silver Sands #5  
P.O. Box 752 WB  
2131 West Bay Road, West Bay  
Grand Cayman**

**Block/Parcel: 5C/191H5**

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## Popovich, Nicholas

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**From:** Department of Planning  
**Sent:** Friday, May 12, 2023 4:09 PM  
**To:** Popovich, Nicholas  
**Subject:** FW: [EXTERNAL] Aqua Bay Redevelopment  
**Attachments:** Cayman Title.pdf.html

**From:** Unknown [mailto:mayjmic0@gmail.com]  
**Sent:** Monday, May 8, 2023 1:29 PM  
**To:** Department of Planning <Planning.Dept@gov.ky>  
**Subject:** [EXTERNAL] Aqua Bay Redevelopment

----- Forwarded message -----

**From:** Maryellen May <[maryellenmay17@gmail.com](mailto:maryellenmay17@gmail.com)>  
**Date:** Mon, May 8, 2023 at 2:24 PM  
**Subject:** Aqua Bay Redevelopment  
**To:** Michael May <[mayjmic0@gmail.com](mailto:mayjmic0@gmail.com)>

May 8, 2023

Director of Planning

Central Planning Authority, Grand Cayman

P. O. Box 113

Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL ([planning.dept@gov.ky](mailto:planning.dept@gov.ky))

**Re: Aqua Bay Redevelopment Request**

**Block/Parcels 5D4, 5C234**



Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

1. The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
2. There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
3. Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.
4. The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
5. The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.

6. Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
  
7. The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
  
8. The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,

*Michael May II*

Michael May II

Silver Sands #16

Block and Parcel 5C191H16

812-360-1499



May 6, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: URGENT Information Regarding Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
- (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
- (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of Silver Sands are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage or other done to Silver Sands property or its residents is also unstated and unknown.

- (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,



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GREENHAVEN  
Theodore C. Green, Principal  
Silver Sands #15  
Block and Parcel 5C191H15  
404-889-5776

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May 4, 2023

Director of Planning  
Central Planning Authority, Grand Cayman P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands  
VIA EMAIL (planning.dept@gov.ky)

Re: Aqua Bay Redevelopment Request

Block/Parcels 5D4, 5C234

Dear Planning Committee,

I am a notified adjacent property owner and object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The proposed development breaches the density allowance of 25 units per acre of land.  
EX: 25 X 1.38 acres equals 34.5 units not 38 as proposed.
- (2) The proposed development exceeds the site coverage allowance. The allowed percentage is 40%. The Aqua Bay proposal including paved areas is 52.7%
- (3) Section 3.05(c) – This development is a breach of this code and clearly represents over-development. We request a full impact assessment be completed.
- (4) The demolition will cause a direct impact to surrounding owners and rental guests from excessive noise, debris, traffic, loud machinery and other heavy deconstruction activities.
- (5) The pool retaining wall is a hazard to the existing and adjacent beach fronts.  
Cayman has several examples of retaining wall erosion issues such as the Marriott Hotel.
- (6) The request for septic instead of a sewer option.
- (7) Impact on wildlife including the turtle nesting areas.
- (8) The development does not address the Cayman affordable housing crisis.

Thank you,

John Lockbaum  
Block 5C Parcel191H5  
2131 West Bay Road SilverSands # 5

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May 8, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
  - (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
  - (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of Silver Sands are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.
  - (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
-

- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,



Kathy Tatum  
Silver Sands #38  
Block and Parcel 5C191H39  
345-949-3407



## Popovich, Nicholas

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**From:** Department of Planning  
**Sent:** Friday, May 12, 2023 4:08 PM  
**To:** Popovich, Nicholas  
**Subject:** FW: [EXTERNAL] Aqua Bay Redevelopment Request, Block/Parcels 5D4, 5C234

**From:** Marie Adkins [mailto:dwakiwi@aol.com]  
**Sent:** Monday, May 8, 2023 11:06 AM  
**To:** Department of Planning <Planning.Dept@gov.ky>  
**Subject:** [EXTERNAL] Aqua Bay Redevelopment Request, Block/Parcels 5D4, 5C234

May 4, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL ([planning.dept@gov.ky](mailto:planning.dept@gov.ky))

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor, I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

1. The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When we purchased our home at Silver Sands, we invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
2. There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
3. Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of Silver Sands are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.
4. The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
5. The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
6. Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
7. The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.

8. The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,

Danny & Wilda Adkins  
Silver Sands #7  
Block and Parcel 5C191H7  
345-928-9848

## Popovich, Nicholas

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**From:** Department of Planning  
**Sent:** Friday, May 12, 2023 4:08 PM  
**To:** Popovich, Nicholas  
**Subject:** FW: [EXTERNAL] Aqua Bay Redevelopment Request/Block/Parcel 5D4,5C234

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**From:** Douglas Shearer [mailto:shearesq@yahoo.com]  
**Sent:** Monday, May 8, 2023 10:13 AM  
**To:** Department of Planning <Planning.Dept@gov.ky>  
**Subject:** [EXTERNAL] Aqua Bay Redevelopment Request/Block/Parcel 5D4,5C234

VIA EMAIL to [planning.dept@gov.ky](mailto:planning.dept@gov.ky)

Director of Planning  
Central Planning Authority, Grand Cayman  
P.O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

Dear Sir:

As a notified Joint Proprietor, I object to the proposed application for planning permission of Block and Parcel 5D4, 5C234, for the following reasons;

1. I have not been presented with notice regarding demolition nor specific conditions to be imposed upon the developer during the tear down process.
2. The density will increase dramatically with 10 stories at Aqua Bay.
3. Concern over turtle nesting the next 3 years and in the future.
4. Concern over erosion similar to that by the Marriott with significant retaining walls planned at Aqua Bay.
5. Additional cars and traffic on the roads and at Aqua Bay.
6. Demolition, noise, dust, and possible pollution during construction which will probably last at least 3 years.
7. Parking, workers and construction equipment during construction.
8. Damage to Silver Sands infrastructure during the demolition and construction.
9. Concern over safety for Silver Sands Proprietors and guests during demolition and construction.
10. Peace and quiet on the beach will be detrimentally affected which currently is an asset of the Cayman Islands. It is priceless and beyond one's ability to quantify.

Regards,  
R. Douglas Shearere  
Silver Sands #24  
Block and Parcel 5C191H24

PO Box 515  
Pine Beach, NJ 08741 USA  
732-330-3031

May 4, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighboring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighborhood.
  - (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
  - (3) Obviously, the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighboring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.
  - (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
-

- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,



Joseph Owens  
Silver Sands #40  
Block and Parcel 5C191H40  
345-949-3889

## Popovich, Nicholas

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**From:** Department of Planning  
**Sent:** Friday, May 12, 2023 4:08 PM  
**To:** Popovich, Nicholas  
**Subject:** FW: [EXTERNAL] Aqua Bay Development Concern  
**Attachments:** IMG\_8268.jpg.html

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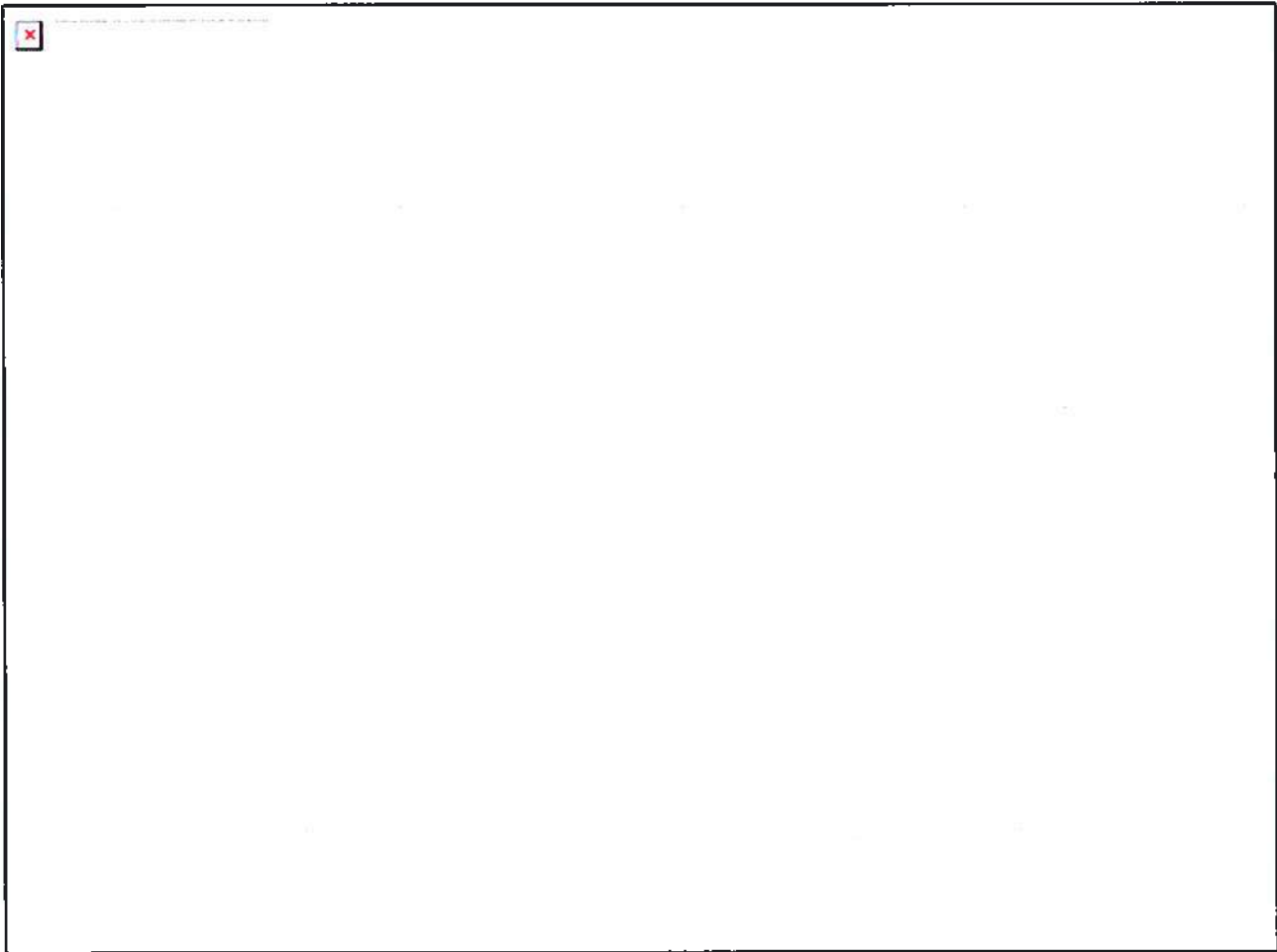
**From:** KAREN SHEARER [mailto:karen2748@yahoo.com]  
**Sent:** Monday, May 8, 2023 6:34 AM  
**To:** Department of Planning <Planning.Dept@gov.ky>  
**Subject:** [EXTERNAL] Aqua Bay Development Concern

Director of Planning, PO Box 113, Grand Cayman ,KY 1-9000, Cayman Islands;

As a notified joint proprietor, I object to the proposed application for planning permission of Block and Parcel 5D4, 5C234, for the following reasons;

1. Allowing 10 stories on 7 MB will change the entire character of the beach and Grand Cayman. Is it all about the money?
2. The density will increase dramatically with 10 stories at Aqua Bay.
3. Concern over turtle nesting the next 3 years and in the future.
4. Concern over erosion similar to that by the Marriott with significant retaining walls planned at Aqua Bay.
5. Additional cars and traffic on the roads and at Aqua Bay.
6. Demolition, noise, dust, and possible pollution during construction which will probably last at least 3 years.
7. Parking, workers and construction equipment during construction.
8. Damage to Silver Sands infrastructure during the demolition and construction.
9. Concern over safety for Silver Sands Proprietors and guests during demolition and construction.
10. Peace and quiet on the beach. Priceless.

Regards,  
Karen H Shearer  
Silver Sands #24  
Block and Parcel 5C191H24  
PO Box 515  
Pine Beach, NJ 08741 USA  
732-330-3032  
345-949-3565



Sent from my iPhone



7 May 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request; Block/Parcels 5D4, 5C234**

Dear Sirs,

I am the registered owner of Unit 33 Silver Sands (Block 5C, Parcel 191H33) and a Cayman status holder. I am aware that an application has been made for permission to redevelop the Aqua Bay condo complex. I have reviewed the application online and I am writing to object to it, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are inconsistent with the character of the neighbouring properties. Including high rise apartments on this end of the beach will create denser population and forever change the landscape, especially if other condo blocks follow suit.
- (2) The proposed project does not have enough under ground parking for 38 units, and some of the proposed parking is on the other side of a busy stretch of road. Planning to have people run across a busy stretch of road is both dangerous and sure to cause additional traffic problems.
- (3) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area, which might be impacted by this project. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. I respectfully ask the CPA to reject the application. Thank you for your consideration.

Yours sincerely,



Erin Galatopoulos

+1 345 926 0770 / erin\_k\_baker@yahoo.com

## Popovich, Nicholas

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**From:** Department of Planning  
**Sent:** Friday, May 12, 2023 4:08 PM  
**To:** Popovich, Nicholas  
**Subject:** FW: [EXTERNAL] Aqua Bay Redevelopment  
**Attachments:** Cayman Title.pdf.html

**From:** Maryellen May [mailto:maryellenmay17@gmail.com]  
**Sent:** Sunday, May 7, 2023 1:38 PM  
**To:** Department of Planning <Planning.Dept@gov.ky>  
**Subject:** [EXTERNAL] Aqua Bay Redevelopment

May 7, 2023

Director of Planning

Central Planning Authority, Grand Cayman

P. O. Box 113

Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL ([planning.dept@gov.ky](mailto:planning.dept@gov.ky))

**Re: Aqua Bay Redevelopment Request**

**Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

1. The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
2. There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
3. Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.
4. The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
5. The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
6. Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
7. The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.

8. The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,

*Maryellen May*

Maryellen May

Silver Sands #16

Block and Parcel 5C191H16

812-322-7997

**WINCHESTER HOUSE  
GRAND DOUIT ROAD  
ST SAMPSON'S  
GUERNSEY  
GY2 4WG, CHANNEL ISLANDS**

7 May, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request (Application for Planning Consent)  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
- (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
- (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.

- (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.
- (9) The development would make the area unattractive which would deter returning visitors to the Cayman Islands.
- (10) West Bay still has Caymanian charm due to the lack of high rise buildings and local West Bay residents do not want high rise buildings in this area.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Yours sincerely,



DAVID ROBERT MITCHISON  
Silver Sands #34  
Block and Parcel 5C191H34  
+44 1481 254478

**WINCHESTER HOUSE  
GRAND DOUIT ROAD  
ST SAMPSON'S  
GUERNSEY  
GY2 4WG, CHANNEL ISLANDS**

7 May, 2023

**Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands**

VIA EMAIL ([planning.dept@gov.ky](mailto:planning.dept@gov.ky))

**Re: Aqua Bay Redevelopment Request (Application for Planning Consent)  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
  - (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
  - (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.
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- (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.
- (9) The development would make the area unattractive which would deter returning visitors to the Cayman Islands.
- (10) West Bay still has Caymanian charm due to the lack of high rise buildings and local West Bay residents do not want high rise buildings in this area.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,



Anne Marie Mitchison  
Silver Sands #34  
Block and Parcel 5C1911134  
+44 1481 254478



## Popovich, Nicholas

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**From:** Department of Planning  
**Sent:** Friday, May 12, 2023 4:07 PM  
**To:** Popovich, Nicholas  
**Subject:** FW: Aqua Bay Redevelopment  
**Attachments:** Cayman Title.pdf.html

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**From:** Michael May [mailto:michael@interiormythos.com]  
**Sent:** Sunday, May 7, 2023 10:19 AM  
**To:** Department of Planning <Planning.Dept@gov.ky>  
**Subject:** [EXTERNAL] Aqua Bay Redevelopment

May 7, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL ([planning.dept@gov.ky](mailto:planning.dept@gov.ky))

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
- (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
- (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.

- (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,

*Michael D. May*

Michael D. May  
Silver Sands #16  
Block and Parcel 5C191H16  
812-606-7152

May 7, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)  
Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234

Dear Sirs,

As a duly notified adjacent property Proprietors (see attached Notice), we hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighboring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay Neighbourhood.
  - (2) There is no application that we can see for planning permission to tear down the existing Aqua Beach development. We are aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
  - (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighboring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and Unknown.
  - (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
  - (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close
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distance of the units on the east side of our property, and on the west side of The Palms property.

(6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.

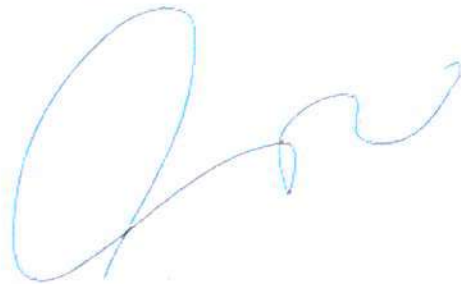
(7) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.

(8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. We strongly urge you to reject the Application as Submitted.

Please advise if you have any questions or need further information.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Roberta and Steve King', written in a cursive style.

Roberta and Steve King  
Silver Sands #4  
Block and Parcel 5C191H39  
+1-910-583-7099  
[robertaking.king@gmail.com](mailto:robertaking.king@gmail.com)  
[sksking8@gmail.com](mailto:sksking8@gmail.com)

## Popovich, Nicholas

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**From:** Department of Planning  
**Sent:** Friday, May 12, 2023 4:07 PM  
**To:** Popovich, Nicholas  
**Subject:** FW: [EXTERNAL] Objection to Aqua Bay Development  
**Attachments:** Aqua Bay Notification to Proprietor.pdf.html

**From:** Pdl50 [mailto:pdl50@aol.com]  
**Sent:** Sunday, May 7, 2023 9:46 AM  
**To:** Department of Planning <Planning.Dept@gov.ky>  
**Cc:** silver@candw.ky; dkbrazelton@aol.com  
**Subject:** [EXTERNAL] Objection to Aqua Bay Development

May 6, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL ([planning.dept@gov.ky](mailto:planning.dept@gov.ky))

**Re: Aqua Bay Redevelopment Request**

**Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

(1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.

(2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.

(3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of Silver Sands are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic or other damage done to Silver Sands property or its residents is also unstated and unknown.

(4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.

(5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.

(6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.

(7) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.

(8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,  
Priscilla L. Holt  
Silver Sands #35  
Block and Parcel 5C191H35  
847-772-4597

May 4, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL ([planning.dept@gov.ky](mailto:planning.dept@gov.ky))

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
  - (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
  - (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.
  - (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
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- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigation actions are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,



Dr Robert Hurst (Corbiere Investments)  
Silver Sands #13  
West Bay South Block 5C Parcel 191 H13  
345-949-1985



**Tim & Caroline Courtis**  
**P.O. Box 130, KY1-9006**  
**Grand Cayman, Cayman Islands**  
Tel 345 526 3022      email: tcourtis607@gmail.com

May 6, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request**  
**Block/Parcels 5D4, 5C234**

Dear Sir,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my property at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
  - (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
  - (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of Silver Sands are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.
  - (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
-


- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.
- (9) Redevelopment is a natural occurrence as properties age. However, the short-term financial greed of property owners to build bigger/higher buildings on their property in order to maximize personal financial gain without consideration for the environment and the very nature of Seven Mile Beach needs to be put in check by government planning.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,

*Caroline A. Courts*

  
Tim & Caroline Courts  
Silver Sands Unit #2  
Block and Parcel 5C191H2

## Popovich, Nicholas

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**From:** Department of Planning  
**Sent:** Friday, May 12, 2023 4:06 PM  
**To:** Popovich, Nicholas  
**Subject:** FW: [EXTERNAL] Aqua Bay Redevelopment Request Block/Parcels 5D4 5C234

**From:** tonisaltair@aol.com [mailto:tonisaltair@aol.com]  
**Sent:** Saturday, May 6, 2023 5:47 PM  
**To:** Department of Planning <Planning.Dept@gov.ky>  
**Subject:** [EXTERNAL] Aqua Bay Redevelopment Request Block/Parcels 5D4 5C234

May 6, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P.O.Box 113

Dear Sirs:

As a duly notified adjacent property proprietor (see attached notice), I hereby strongly object to the CPA's approval of the above referenced project for the following reasons:

1. The physical characteristics of the proposed ten story (plus rooftop) are totally inconsistent with the character of the neighboring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested not only in the property, but also for the surrounding tranquility, peace, quiet and aesthetics of the West Bay neighborhood.
2. There is no application I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem there should be specific conditions associated with that portion of the job.
3. Obviously, the dust, noise, pollution and vibrations from the demolition (and the new construction) will have an adverse effect on neighboring properties and the owners of the Palms are entitled to see any impact assessments as a result of such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated.
4. The critical mass and height of the proposed development will adversely affect or block daylight, sunlight and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
5. The garage parking design reflects exit and entry traffic lanes on each side of the building vehicles, exhaust fumes and noise within a very close distance to of the units on the east side and the west side of the Palms property.
6. Additional parking is planned on the other side of busy West Bay Road where there is a curve with limited sight distance creating even more traffic and danger of accidents for vehicles and pedestrians walking back and forth between their cars and the Aqua Bay building.
7. The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for

for at least 2 to 3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.

8. The plans call for an elevated concrete retaining wall on the beach side of the pool deck which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues will arise which cannot currently be foreseen. Attempting to squeeze this massive size project into the frontage/property width area of Aqua Bay--between two existing vibrant properties--is an affront to every proprietor on each side of the project. I strongly urge you to reject the application as submitted.

Please advise if you have any questions or need further information.

Sincerely,

Toni A. Reilly  
Silver Sands #14  
345 949 2651

May 4, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

Re: Aqua Bay Redevelopment Request  
Block/Parels 5D4, 5C234

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including the Palms (my home). When the Proprietors of The Palms acquired their homes, they invested not only in the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
- (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that.
- (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to the Palms property or its residents is also unstated and unknown.
- (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at the Palms and Silver Sands that are adjacent to Aqua Bay.

- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the west side of our property, and on the east side of the Silver Sands property
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at The Palms and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (8) The plans call for an elevated concrete retaining wall on the beach side of the pool. Recent experience in Cayman has shown that these walls can cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project and could accelerate the destruction of the islands most precious asset—its pristine beaches. We strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,



Richard Donley



Mary E. Donley

Richard & Mary Donley  
Joint Proprietors  
The Palms Condominiums – Unit 1  
Block / Parcel 5D 3H1

412-370-7885  
rdonley433@gmail.com

## Popovich, Nicholas

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**From:** Department of Planning  
**Sent:** Friday, May 12, 2023 4:06 PM  
**To:** Popovich, Nicholas  
**Subject:** FW: [EXTERNAL] Aqua Bay Redevelopment,Block/Parcel 5d4, 5C234

-----Original Message-----

**From:** Henry Nichols [mailto:hnichols246@gmail.com]  
**Sent:** Saturday, May 6, 2023 5:09 PM  
**To:** Department of Planning <Planning.Dept@gov.ky>  
**Subject:** [EXTERNAL] Aqua Bay Redevelopment,Block/Parcel 5d4, 5C234

Director of Planning  
Central Planning Authority, Grand Cayman

Aqua Bay Redevelopment Request  
Block /Parcels 5D4, 5C234

Sirs,

As a duly notified adjacent property, owner, I hereby object to the totally inconsistent redevelopment of Aqua Bay condos to a 10 story plus rooftop building blocking sunlight and views from the Palms and Silver Sands, condos that are adjacent to the proposed redevelopment.

Since the massive building uses all available land for parking, a garage below the structure is to be utilized. However, if that is not enough, parking across West Bay Road is proposed, meaning a person must walk (or run) to cross the heavily traveled road. This is indeed a hazardous undertaking, even for visitors in good physical condition.

The beachfront at both The Palms and Aqua Bay is known to the DOE as an active turtle nesting area which be severely affected by the massive building covering the entire grounds of the existing Aqua Bay condos.

Plans call for a concrete wall to be built which could have the undesirable effect of wave action moving sand from The Palms to the other side of the wall.

I have read in the Compass of the need to build new construction more inland instead of on the beaches. Does this proposed project fall in that category, or is it to be excused for some reason?

Thank you for taking time to read my objections to this project.

Henry Nichols  
Hnichols246@gmail.com  
Owner #8, The Palms, Block/Parcel 5D3H08  
345 945-1677 home phone

Sent from my iPad

May 4, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
- (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
- (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.
- (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.



- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,



Margaret A. Keshishian  
Silver Sands #8  
Block 5C, Parcel 191H8  
345-949-3154  
US 202-836-2516

May 5, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
  - (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
  - (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.
  - (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
-

- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,



Sheila Torch  
Silver Sands #3  
Block and Parcel 5C191H3  
345-949-1952

May 4, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL ([planning.dept@gov.ky](mailto:planning.dept@gov.ky))

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
  - (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
  - (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.
  - (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
-

- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,

Robert & Marie Schrock  
Silver Sands #36  
Block and Parcel 5C-191H36  
574-536-2503

May 5, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As an adjacent property Proprietor waiting to receive Notice of the proposed redevelopment, I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
  - (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
  - (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of Silver Sands are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.
  - (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
-

- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,



Helen Haddleton  
Silver Sands #30  
Block and Parcel 5C191H30  
345-326-3705

## Popovich, Nicholas

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**From:** Department of Planning  
**Sent:** Friday, May 12, 2023 4:05 PM  
**To:** Popovich, Nicholas  
**Subject:** FW: [EXTERNAL] Aqua Bay Redevelopment Request  
**Attachments:** Silver Sands PALMS letter 5 6 23.pdf.html; TRAVEL LOGO E.png.html; INSTAGRAM logo 3.png.html

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**From:** Alicia [mailto:[alicia@adkcarpets.com](mailto:alicia@adkcarpets.com)]  
**Sent:** Saturday, May 6, 2023 11:49 AM  
**To:** Department of Planning <[Planning.Dept@gov.ky](mailto:Planning.Dept@gov.ky)>  
**Cc:** [dkbrazelton@aol.com](mailto:dkbrazelton@aol.com); Gwenda cell silver sands <[silsands@candw.ky](mailto:silsands@candw.ky)>  
**Subject:** [EXTERNAL] Aqua Bay Redevelopment Request

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL ([planning.dept@gov.ky](mailto:planning.dept@gov.ky))

Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234

Dear Sirs,

As an owner of property on Grand Cayman since the early 1980's and duly notified adjacent property Proprietor, I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

(1)

The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighboring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, aesthetics of the West Bay neighborhood and the lovely ocean. We intentionally chose the West Bay area for it's distance from other condos and apartments.

(2)



There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.

(3)

Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighboring properties as well as the marine life, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.

(4)

The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.

(5)

The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.

(6)

Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.

(7)

The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans. Nature should be deeply respected and honored especially in a place where natural beauty is what makes Cayman the destination it has become. To ignore it is detrimental to sustaining a healthy environment.

(8)

The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

We love The Cayman Islands and hope that our little slice of paradise can be protected.

Sincerely,

Alicia D Keshishian  
Silver Sands #8  
West Bay South, Block 5C, Parcel 191H8.  
345.949.3154  
US 707.775.3494

May 5 2023

**Alicia D. Keshishian**

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May 6th, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
  - (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
  - (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.
  - (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
-

- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The garbage storage area is currently designed to be on the opposite side of West Bay Road from the building, in the proposed parking overflow lot. This is dangerous to the workers needing to walk across a busy road with limited sight distance, but also can be a cause of unsanitary conditions, and unwanted odors at the Silver Sands property
- (8) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
- (9) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,

Carl and Maria Hauch  
Silver Sands #9  
Block and Parcel 5C191H39  
345-945-2944

LANDIS, Ltd  
PO BOX 30160  
Grand Cayman KT1-1200  
Cayman Islands

May 6, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL ([planning.dept@gov.ky](mailto:planning.dept@gov.ky))

Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234

Dear Sirs,

As a duly notified adjacent property Proprietor , I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

(1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including the Palms (my home). When the Proprietors of The Palms acquired their homes, they invested not only in the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.

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(2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.

(3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to the Palms property or its residents is also unstated and unknown.

(4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at the Palms and Silver Sands that are adjacent to Aqua Bay.

(5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the west side of our *property*, and on the east side of the Silver Sands property.

(6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.

(7) The beachfront at The Palms and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost

certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.

(8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur and as sea levels rise.

There are no doubt other problematic issues which will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every Proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,

Granger Haugh  
Joint Proprietor  
The Palms Condominiums – Unit 6 and Unit 7  
Block / Parcel 5D3H12

(760) 877-3173  
grangerhaugh@gmail.com

---

May 4, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor , we hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
  - (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
  - (3) Obviously the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighbouring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to Silver Sands property or its residents is also unstated and unknown.
  - (4) The critical mass & height of the proposed development will adversely affect or block daylight, sunlight, and views from units at Silver Sands and The Palms that are adjacent to Aqua Bay.
-



- (5) The garage parking design reflects entry and exit traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the east side of our property, and on the west side of The Palms property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.
- (7) The beachfront at Silver Sands and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc. from the proposed plans.
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Please advise if you have any questions or need further information.

Sincerely,

Roy and Diane Brazelton  
Silver Sands #39  
Block and Parcel 5C191H39  
345-916-2905

## Popovich, Nicholas

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**From:** Department of Planning  
**Sent:** Friday, May 12, 2023 4:04 PM  
**To:** Popovich, Nicholas  
**Subject:** FW: Aqua bay redevelopment

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**From:** john fager [mailto:fager12@msn.com]  
**Sent:** Saturday, May 6, 2023 3:44 AM  
**To:** Department of Planning <Planning.Dept@gov.ky>  
**Subject:** [EXTERNAL] Aqua bay redevelopment

As an owner of # 18 at Silvers Sands Strata since 1979 and lover of this island please  
Consider the following when reviewing :

10+ story is way out of keeping and character of the neighborhood.

A "shadow study " should be submitted by the developer. It will show that early morning  
Sunlight will be denied significant portions of Silver Sands property severely affecting and diminishing the value of our  
property.

Obvious traffic problems.

A WIND TUNNEL created by a building this tall will effect the beach sand accumulation pattern. The wind bouncing off  
of this pdroposed building will adversely affect the enjoyment of our property, especially the beach.

There may be locations for 6-10 story or taller buildings on the island . This is NOT one of them.  
Please consider scrapping this proposal for the good of the island.

Respectfully ,

John and Michelle Fager

Sent from [Mail](#) for Windows 10

May 5, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including the Palms (my home). When the Proprietors of The Palms acquired their homes, they invested not only in the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
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Please advise if you have any questions or need further information.

Sincerely



Edelgard Beister  
Proprietor  
The Palms Condominiums – Unit 14  
Block / Parcel 5D3H13

(345) 926 8342  
ebeister70@gmail.com

May 4, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL ([planning.dept@gov.ky](mailto:planning.dept@gov.ky))

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

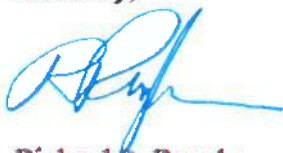
- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including the Palms (my home). When the Proprietors of The Palms acquired their homes, they invested not only in the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
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Please advise if you have any questions or need further information.

Sincerely,



Richard R. Reupke  
Joint Proprietor  
The Palms Condominiums – Unit 12  
Block / Parcel 5D3H12

(214) 924-5597  
[reupke@crp1492.com](mailto:reupke@crp1492.com)

May 5, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including the Palms (my home). When the Proprietors of The Palms acquired their homes, they invested not only in the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
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Please advise if you have any questions or need further information.

Sincerely,



Joan H Addison  
Joint Proprietor  
The Palms Condominiums – Unit 10  
Block / Parcel 5D3H12

(905) 773 8222  
(647) 448 0222

Moorecroft18@gmail.com



## Popovich, Nicholas

---

**From:** Department of Planning  
**Sent:** Friday, May 5, 2023 10:16 AM  
**To:** Popovich, Nicholas  
**Subject:** FW: [EXTERNAL] Aqua Bay Redevelopment Request Block/Parcels 5D4, 5C234

**From:** Russ Cersosimo [mailto:russcsr@gmail.com]  
**Sent:** Friday, May 5, 2023 6:06 AM  
**To:** Department of Planning <Planning.Dept@gov.ky>  
**Subject:** [EXTERNAL] Aqua Bay Redevelopment Request Block/Parcels 5D4, 5C234

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above-referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10-story (plus rooftop) redevelopment is totally inconsistent with the character of the neighboring properties, including the Palms (my home). When the Proprietors of The Palms acquired their homes, they invested not only in the property but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighborhood.
- (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans, it would seem that there should be specific conditions associated with that portion of the job.
- (3) Obviously, the dust, noise, pollution, and vibrations from the demolition (and the new construction) will have an adverse effect on neighboring properties, and the owners of the Palms are entitled to see any impact assessments as a result such work, including the possibilities of any sinkholes opening up, and other known risks to the foundation and other damage to adjacent properties. The level of insurance coverage protection which will be in place in the event of catastrophic damage done to the Palms property or its residents is also unstated and unknown.
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- (5) The garage parking design reflects entry and exits traffic lanes on each side of the building, bringing vehicles, exhaust fumes, and noise within a VERY close distance of the units on the west side of our property, and on the east side of the Silver Sands property.
- (6) Additional parking for the project is planned on the OTHER side of the busy West Bay Road (where there is a curve with limited sight distance), creating even more

traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.

(7) The beachfront at The Palms and Aqua Bay is well known by DOE as a very active sea turtle nesting area. A project of this magnitude with demolition and reconstruction going on for at least 2-3 years will almost certainly have an adverse effect on that activity. We cannot tell what mitigations are planned for lighting, beach protection from construction debris, etc., from the proposed plans.

(8) The plans call for an elevated concrete retaining wall on the beach side of the pool deck, which could cause significant erosion issues on Seven Mile Beach as tropical systems occur, and as sea levels rise.

There are no doubt other problematic issues that will arise which cannot currently be foreseen. Attempting to squeeze this massive size of a project into the frontage/property width area of Aqua Bay – between two existing vibrant properties – is an affront to every The proprietor on each side of the project. I strongly urge you to reject the Application as submitted.

Please advise if you have any questions or need further information.

Sincerely,  
Russell L Cersosimo  
The Palms unit #5

KY1-1003  
525 5546

6<sup>th</sup> May 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request  
Block/Parcels SD4, 5C234**

Dear Sirs,

As the registered owner of #1 Silver Sands, I object to the CPA's approval of the above referenced project for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including my home at Silver Sands. When the proprietors of Silver Sands purchased their homes, they invested in not only the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
- (2) There is no application that I can see for planning permission to tear down the existing Aqua Beach development. I am aware that full demolition work is required, but looking at the plans it would seem that there should be specific conditions associated with that portion of the job.
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West Bay Road (where there is a curve with limited sight distance), creating even more traffic and danger of accidents for vehicles AND pedestrians walking back and forth between their cars and the Aqua Bay building.

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Please advise if you have any questions or need further information.

Sincerely,



Wilson Landmark  
Silver Sands # 42  
Block and Parcel 5C 191 H 39  
(345) 949-1926

May 4, 2023

Director of Planning  
Central Planning Authority, Grand Cayman  
P. O. Box 113  
Grand Cayman KY1-9000, Cayman Islands

VIA EMAIL (planning.dept@gov.ky)

**Re: Aqua Bay Redevelopment Request  
Block/Parcels 5D4, 5C234**

Dear Sirs,

As a duly notified adjacent property Proprietor (see attached Notice), I hereby strenuously object to the CPA's approval of the above referenced project, for the following reasons:

- (1) The physical characteristics of the proposed 10 story (plus rooftop) redevelopment are totally inconsistent with the character of the neighbouring properties, including the Palms (my home). When the Proprietors of The Palms acquired their homes, they invested not only in the property, but also for the surrounding tranquility, peace, quiet, and aesthetics of the West Bay neighbourhood.
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Please advise if you have any questions or need further information.

Sincerely,



Mayra Lenders Artusi  
Single Proprietor  
The Palms Condominiums – Unit 9  
Block / Parcel 5D3H9

(512) 731-3749  
mayra.artusi@gmail.com

## Appendix B

The Chairman  
C/O the Executive Secretary  
Central Planning Authority  
Government Administration Building  
Elgin Avenue, George Town  
Cayman Islands

BY EMAIL

28 February 2024

Dear Sir,

**Re: Application for Planning Permission – Aqua Bay – P23-0275**

We are instructed by Butler Group Limited in respect of its application for planning approval of the development in caption.

We have been instructed to make the following legal submissions in support of our client's application.

**National Conservation Act**

This matter was previously considered by the CPA under Section 41 of the National Conservation Act ("NCA") and the application was referred by the CPA to the National Conservation Council ("NCC") pursuant to Section 41(4), whereby the necessary consent and guidance was sought from the NCC.

The memorandum of the Director of Environment (DoE) of 15 January 2024 confirms that the National Conservation Council, via its delegated authority to the Director of DoE, considered the Section 41(4) request and has agreed to the proposed application being granted subject to certain specified conditions being issued as provided under section 41(5) (a) of the NCA.

Our client accepts and agrees to the inclusion of the NCC's directed conditions as reflected in the DoE's memorandum, which should obviate any further discussion or consideration of the provisions of the NCA, as both the CPA and NCC have discharged their respective statutory functions under the NCA.

**Building Height and Storeys**

Our client submits that the building height and number of storeys in respect of the proposed development is fully compliant with the Development and Planning Regulations (2022 Revision) ("DPR") and is consistent with a number of other



approved developments in the West Bay Road/Seven Mile Beach Hotel/Tourism Zone 1 area, all of which have been approved, and many of which have already been constructed, during the past 13 years since those height restrictions were implemented.

Regulation 8(2)(e)(i) DPR provides: *“when the building is a hotel or apartment in Hotel/Tourism zone 1 or in Hotel/Tourism zone 2, the maximum permitted height is one hundred and thirty feet or ten storeys, whichever is less...”*

Regulation 8(4) DPR goes on to provide that:

*“Subregulation (2) does not apply to any chimney, storey below grade, church spire, dome, cupola, stage tower, water cooling tower, elevated water storage tank, elevator tower, radio or television antenna tower, smokestack, parapet wall or structure of a like nature, non-habitable ancillary spaces, and any necessary mechanical appurtenances thereof...”*

“Height” is defined in Regulation 2 DPR, to wit:

*““height of a building” means the vertical distance measured from the highest point on a proposed or existing building to the proposed finished grade directly below that point...”*

In accordance with the DPR, our client’s development is one hundred and thirty feet (130’) in height.

“Habitable space” is defined in the International Residential Code (“IRC”). The IRC defines “habitable space” to mean *“a space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.”* It is therefore submitted that “non-habitable” spaces are those spaces in a development which are not intended for living, eating or cooking.

With respect to the number of storeys, the development comprises 10 habitable storeys, one below grade and non-habitable underground parking/machinery storey and roof top mechanical and elevator/stairway with non habitable roof-top appurtenances. The underground parking is exempted by virtue of Regulation 8(4) DPR, on the bases of firstly, it is *“below grade”* and, secondly, because it comprises *“non-habitable space”*. The development’s rooftop structures are also exempted pursuant to Regulation 8(4) DPR as it is comprised of elevator shafts, water tanks and other mechanical structures of a like nature, and it also comprises *non-habitable space*.

Our client's application therefore satisfies both the maximum height, as well as the permitted storey count pursuant to the DPR and consequently does not require any variance in respect of those matters.

## Density

Subject to the CPA agreeing with the rationale set out below, if necessary, our client would seek a minor variance in respect of unit density. We submit however, that such variance is not required, for the following reasons.

Regulation 10(1)(b) provides that the number of apartment buildings is twenty-five per acre. It should be noted that there is no reference in regulation 10(1)(b) to such density calculation being restricted to the boundaries of a single parcel or for it to only be applied to a part of a development site where the site is not contiguous for example where it is divided by a road. The wording is clear that the calculus for density is *apartments per acre*. It is therefore submitted that the only logical construction of this provision is that the acreage that must be taken into account for the calculation of density is the total acreage of the **development site** in question. It is further submitted that this is made especially clear where there is express provision in the regulations for approving ancillary development (such as parking) on an adjacent parcel that comprises part of the overall development site. Any other interpretation would be illogical and would amount to an erroneous and unfair interpretation of the regulations.

Block 5D Parcel 4 is 1.38 acres. Additionally, Block 5C Parcel 234 is 0.256 acres. Accordingly, if only Block 5D Parcel 4 is used to calculate density, then 34.5 units would be permissible, whereas if Block 5C, Parcel 234 is logically and correctly taken into account as a part of the development site, then 40.9 units would be permissible. Our client's application seeks permission for 38 units.

For the reasons outlined above, our client submits that the cumulative size of the two parcels should be taken into account in respect of the application as Block 5C Parcel 234 forms an integral, albeit physically segregated, part of the development for which permission is being sought.

Furthermore, if the Authority deems it necessary, it can condition the approval on restrictive covenants being filed on the Register of Block 5C, Parcel 234 which covenants would require the land to be solely used in connection with the approved plans and for the benefit of Aqua Bay. It is noted that a similar condition was recently applied by the Authority in respect of its approval of the Westin redevelopment, P20-0053. If the Authority deems a similar condition to be of

assistance in the instant case, our client would have no objection to its inclusion. Alternatively, since the development will be ultimately be registered as a strata, the CPA could impose conditions that require the applicant to register the ancillary development across the road as common property, thereby preventing the same from being sold except by a "super majority" of the strata owners.

We submit that either of these conditions (requiring restrictive covenants or strata common property) would be superfluous, however, since the planning approval being sought is for a single development site with essential ancillary development being located across the road on Parcel 234 and, as such, any attempt by the applicant or anyone else trying to segregate this part of the development from the primary condo development across the road would constitute, *ipso facto*, a breach of planning control which could readily be prevented by way of the enforcement notice process and, ultimately, criminal penal sanction.

In the event that the CPA for some reason does not agree with the approach outlined above and concludes that, for some reason not apparent to us, that only the area of Block 5D, Parcel 4 should be taken account for the density calculation, our client would only need to seek a very minor variance for 3.5 additional units.

Regulation 8(13) DPR provides that notwithstanding the requirements of regulation 10, the Authority may grant planning permission for a development which does not comply with those provisions, including density, if it is satisfied that there is a sufficient reason and an exceptional circumstance for granting such variance.

In respect of sufficient reason, our client submits that the restrictive maximum unit count provided by regulation 10(1)(b) is the result of a statutory oversight. In July 2010, amendments were made to the DPR which permitted the development of 10 storey buildings in Hotel/Tourism Zone 1 for the first time. However, it is our contention that at that time, although that would by itself logically allow for a concomitant increase in density (all other things remaining the same), but yet The Legislative Assembly failed to concurrently increase the unit density in respect of hotel/tourism zoned developments. As a result, although the height and storey count was increased in H/T Zone 1 by those amendments, the unit count remained at twenty five (25) units per acre, just as it has been when only seven storeys were permitted. As an unintended result of such legislative oversight, the development can only comprise larger units, but not more units, despite the floor area being increased by some 30%. It is our client's submission that this was an illogical limitation which seriously mitigated the apparent benefit of the height increase. We are instructed by our client that all of the financial model studies undertaken by the development team indicate that in order for the redevelopment of the subject site to be viable, at least 38 units are required. The current existing development is

comprised of 21 apartments, our client is only seeking to add 17 new apartments via this redevelopment project. Of course, more than 38 units would be more financially attractive, but our client has sought only to seek a variance for what is truly necessary to make the project viable at all, and is within the density requirements when the correct density calculus is applied so that the entire site is included.

Furthermore, the variance being sought by our client is very minor at only 3.5 additional units. It is submitted that there is no reason in logic to believe that 3.5 additional units in the development would be materially detrimental to persons residing or working in the area, the adjacent property, the neighbourhood or to the public welfare. It is important to note that the question of being materially detrimental relates only to the scope of the variance sought, i.e. 3.5 additional units, not to the development as a whole.

Furthermore, it is submitted that even if the Authority does not include the second parcel, 5C 234, into account for the purposes of calculating the maximum permissible units, it is permissible for the Authority to take account of the existence of that extra land for the purposes of determining that there is sufficient reason and exceptional circumstances for granting the minor unit variance.

Additionally, our client has not sought to "over-develop" the site or even to maximize the developable area as the proposed development's site coverage is 36.8%, which coverage is below the permitted maximum site coverage provided by regulation 10(1)(e).

For all of the above reasons, it is submitted that there is sufficient reason and exceptional circumstances which permit the Authority to grant the minor unit variance sought by our client.

### Development Plan

It is submitted that our client's development is in keeping with the spirit and intent of the Development Plan and certainly is not at a variance with the Development Plan.

Firstly, the proposed development falls squarely within the permitted use of land within the Hotel/Tourism zone. As the CPA will no doubt be aware, over the years the tourism industry in Cayman has evolved such that there is a significant increase in demand for apartments as opposed to hotel rooms for high-end stay-over tourism accommodation. Without question, there is a growing demand for such accommodation in the Cayman tourism market, particularly so after 2020. This development, like many other before it, will cater to that sector of the tourism

market. As such, it can be said confidently that this development will, in accordance with Part 3.04 of the Planning Statement, is designed to *"ensure that the needs of the tourist industry are met..."*.

Furthermore, Part 1.3 of the Development Plan provides that one of the guiding strategies of the Development Plan is to maintain and encourage the further development of the tourist industry. It should be noted that Part 3.04 of the Development Plan literally provides that one of the permitted developments in the in Hotel/Tourism zones is *"apartments"*. This, in and of itself, makes nonsense of any contention by the objectors that the proposed development is not compliant or somehow offends the Development Plan, as that plainly is not the case, and the opposite is actually true.

Part 3.04 also provides that the statement should be applied in such a way so as to prevent overdevelopment of sites and ensure that waterfront developments are designed to avoid interference with natural coastal processes. It is submitted that the proposed development meets those guiding strategies. The development is one of the highest quality in terms of design and amenity and includes a significant amount of lush landscaping as is typical and expected of a high end Hotel/Tourism development in Seven Mile Beach. Furthermore, the proposed development is not only within, but is well under the maximum permitted site coverage (36.8% vs. 40%). Importantly, the new development will also improve natural coastal processes as the setback will be greater than the existing *in-situ* development and the building line of the condo building will be much further back from the HWM than what is prescribed by regulation 6(3) of the DPR (190' vs 130' for the first three storeys).

Furthermore, it is important to note that the objectors err in their rigid application of the Development Plan. The Development Plan itself provides numerous times that it is not intended to be inflexible or preposterous in application. The ultimate paragraph of Part 1.1 of the Development Statement provides: ***"...The Plan is still intended to take the form of practical guidelines to be applied with flexibility, understanding and commonsense by the Authority"***. Furthermore, paragraph 1.2 provides: ***"...It is intended to define and develop a planning strategy for the Islands which is flexible enough in concept and implication to accommodate individual requirements, special circumstances and changing conditions."*** Furthermore, the Development Plan and the DPR at regulation 5 (3) provide that where there is a conflict between the regulations and the Planning Statement, the regulations shall prevail.

The flexibility of the Development Plan has also been confirmed by the Cayman Islands Grand Court in the decision of the Hon. Panton, AG. J, in Grand View Strata Corporation v Planning Appeals Tribunal and Bronte Development Limited (Appendix

1). In that matter, the Appellant contended that the Tribunal had failed to consider that the Authority had erred in not applying the policies set out in the Development Plan and that it had failed to exercise its own judgment as to whether granting planning permission would be contrary to the Plan.

In that regard, the Hon. Panton, AG. J, at 55, held:

*"Without suggesting at this time that there has been non-adherence to the Development Plan, it may be useful to say that, in my opinion, non-adherence has to be in a significant way on a matter of great importance for planning permission to be overturned.*

*In Simpson v. Edinburgh Corp... Lord Guest noted that the legislation obliges the authority to have regard to the provisions of the Development Plan. However, he said that he did not interpret the words "to have regard to" as meaning "slavishly adhere to". He said that what was meant was that the planning authority was to consider the Development Plan, but there was no obligation to follow it. This interpretation is quite apt in the instant situation, especially when it is considered that the Regulations take priority to the Plan where there is a conflict."*

It is clear that the tourism industry in the Cayman Islands has evolved since the promulgation of the amended Development Plan in 1997. Indeed, the amendments to the permissible number of storeys in H/T Zone 1 from 7 to 10 in 2010 is confirmation of Parliament's intention for Hotel/Tourism zone 1 to support the type of development proposed by our client. Given the age of the existing development and those in the vicinity and the economic lifespan of buildings, the proposed development is likely to be the first of many redevelopment projects along this part of Seven Mile Beach. There are other older low-rise condominiums who may also seek to redevelop into 10 storey buildings. This is not in and of itself negative and is in keeping with what the people of this country, and our Parliament (then "Legislative Assembly") determined, through the fair and democratic process set out under Part II of the Development and Planning Act, was necessary and appropriate to give effect to the objectives and strategies in the Development Plan. Parliament clearly must have intended to promote future development of this type within this area. If the objectors are opposed to this type of development, that is a matter which they should have taken up with Parliament at the time of those amendments. It is clear that the character of the area will shift with time and in light of statutory policies. Therefore, it is our client's submission that the proposed development falls within the spirit and intent of the Development Plan and the DPR and does not constitute overdevelopment of the subject site in light of the existing DPR. If there is any inconsistency, then the DPR shall prevail.

The objectors have also submitted that the Authority is restrained from approving the application on the basis that the Authority is in breach of its statutory duty pursuant to section 10(1) of the Development and Planning Act. The objector is legally misguided in that creative submission. This argument is a legal absurdity and appears to arise from a flagrant misconstruction of the provisions of Section 10 of the Act.

Insofar as the CPA is being accused of a “flagrant breach of its statutory duty to conduct strategic planning”, this accusation is factually false and legally wrong.

Section 10 provides:

*(1) At least once in every five years after the date on which a development plan for any area is approved by the Cayman Islands Parliament the Authority shall carry out a fresh survey of that area, and submit to the Cayman Islands Parliament a report of the survey, together with proposals for any alterations or additions to the plan that appear to them to be required having regard thereto.*

*(2) Notwithstanding subsection (1), the Authority —*

*(a) shall, if at any time so required by the Governor, or by a resolution of the Cayman Islands Parliament; or*

*(b) may, whenever it appears expedient, submit to the Cayman Islands Parliament proposals for alterations or additions to any development plan.*

It is submitted that there has been an ongoing process of reviews and surveys of the Development Plan since its original promulgation in the mid-1970s. This has been documented by the Department of Planning recording the meetings of the CPA where Development Plan reviews are being considered on an ongoing basis. Such ongoing review has, from time to time, resulted in a number of amendments to the Development Plan since the major amendment exercise in 1997. These amendments were made pursuant to subsection (2) of section 10. Certainly, with the slightest degree of effort and industry, the objectors or at least their counsel could have availed themselves of this information.

It is therefore preposterous, in fact outrageous for the objector’s counsel to state that the CPA is in “*flagrant breach of its statutory duty to conduct strategic planning*” whatever that is supposed to mean.

It should be noted that all that Section 10 requires of the CPA is to conduct such "surveys", which it has been doing, and it should be especially noted that it is entirely the CPA's discretion whether to put forward any alterations or additions to the plan that appear to **them** (the CPA) to be required.

Concomitantly, it is abject nonsense for the objectors' counsel to say, based on such a ridiculous proposition that the CPA is "not yet in a position to grant permission for the kind of development proposed by the Applicant".

### Objector's Concerns

Insofar as the objector's raise issues in respect of the scale mass and density, it is submitted that as much as some people may wish to stop the hands of time, development planning is by its very nature forward looking. Although not everyone may agree with Parliament's decision to permit developments of this style in this area, that is a policy decision which the Parliament has made and over which it has exclusive domain. The Authority may of course have regard to the existing character of the neighbourhood, but it should also take account of the fact that this type of development is specifically permitted by statute in the subject location and that all of the surrounding developments are decades old, some of which will at some point in the future need to be demolished and rebuilt. Furthermore, insofar as the objectors rely on the opinion proffered by the Department of Environment's section 7 DPA consultative reply, it is a matter of settled law that matters such as scale, massing and beauty are beyond the remit of the Department of Environment's expertise and are exclusively within the remit of the CPA.

In Grand View Strata Corporation v Planning Appeals Tribunal and Bronte Development Limited at 57, the Hon. Panton, AG. J., provided the following:

"The Department of Environment did not support the proposed development, on the basis that-

(a) *The scale, mass and density of the development is inappropriate for this location and the site's constraints;*

...

(b) *The applicant has not provided sufficient supporting evidence to demonstrate that construction of these buildings is physically feasible.*

*This latter point on the physical feasibility of the buildings seems strange to me considering that the Department of Planning, which received the plans and which would obviously have in its fold experts in this area, has not raised*



*any concerns in that regard. I hardly think that this can be a proper basis for objection by the Department of Environment.*

...

*In respect of the scale, mass and density of the development, the CPA obviously did not see eye-to-eye with the Department of Environment on this matter. There is nothing to compel the CPA to see everything in the same manner in which the department sees it. Were it otherwise, then the Law would not have entrusted the decision-making power to the CPA.*

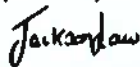
...

*Invariably, in matters of this nature, there will be differences of opinion. One grand View objector said that the development is to take place on the last remaining piece of land left over from the development of Treasure Island and Grand View, and that a 10-storey building will look ugly and completely overwhelm the views of this part of the beach. That which looks ugly to the objector will not necessarily be ugly to the CPA which is tasked with the responsibility of making the decision. As one writer puts it: "Ugliness is a point of view: an ulcer may be beautiful to a pathologist." It is perhaps more conventional to quote either Lew Wallace of Margaret Wolfe Hungerford and simply say "Beauty is in the eye of the beholder."*

It is submitted that the development proposed by our client is in keeping with the scale and massing envisaged by Parliament for Hotel/Tourism Zone 1 and aside from possibly requiring a minor unit count variance (if the CPA determines to consider the sea-side part of the development in isolation), meets all of the relevant provisions of the DRP. Furthermore, the proposed development will enhance the existing seaside setback thereby increasing the critical habitat for nesting sea turtles and enhancing beach sand retention. Indeed, this will be a benefit for the adjacent properties generally. For the avoidance of doubt, our client's application does not require a seawall and has been designed to enhance the accommodation and protection of nesting turtles and turtle hatchlings by installing turtle friendly lighting and by raising the pool area (to prevent any nesting turtles or hatchlings from falling into the pool).

In light of these submissions and those made previously by our client, we respectfully request that the application be granted planning permission in the terms sought.

Respectfully Submitted,



JacksonLaw

## APPENDIX 1

[2016 (1) CILR 227]

**GRAND VIEW STRATA CORPORATION v. PLANNING APPEALS TRIBUNAL and BRONTE DEVELOPMENT LIMITED**

GRAND COURT, CIVIL DIVISION (Panton, Ag. J.): April 8th, 2016

Development and Planning Law – planning permission – setbacks – Development and Planning Regulations (2013 Revision), reg. 8(10)(e) provides for buildings between 3 and 7 storeys to be set back from high water mark by 145 ft. but no provision for taller buildings – Central Planning Authority not to deal with buildings over 7 storeys until regulation amended – error of law to grant planning permission for 10-storey building with 145 ft. setback

Development and Planning Law – Central Planning Authority – reasons for decisions – Authority not required to give reasons for all decisions – if intense objections, error of law not to give reasons for grant of planning permission for building generally regarded as ugly and out of character with surroundings – also error of law not to give reasons for granting permission for 10-storey building with 145 ft. setback from high water mark as Development and Planning Regulations (2013 Revision), reg. 8(10)(e) provides for buildings between 3 and 7 storeys to be set back from high water mark by 145 ft. but no provision for taller buildings

The appellant appealed against a grant of planning permission.

The second respondent applied for permission to construct two apartment blocks, including a 10-storey building, in George Town. The Department of Planning notified persons who might be affected and several government departments and agencies. Objections were made by property owners, and the various agencies submitted a number of comments and recommendations. The Central Planning Authority (“CPA”) invited objectors to attend a hearing into whether planning permission should be granted.

Regulation 8(10)(e) of the Development and Planning Regulations (2013 Revision) provided that “all structures and buildings up to three storeys . . . shall be setback a minimum of [130 ft.] from the high water mark, with an additional [15 ft.] setback for the third through the seventh storey.” There was no provision for a 10-storey building. The CPA granted the application for planning permission, subject to conditions including the submission of a revised plan showing a setback of 145 ft. from the

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high water mark which it considered complied with the required minimum setback.

The appellant appealed to the Planning Appeal Tribunal (“the PAT”), which dismissed the appeal and held that the CPA had not erred in granting planning permission. The PAT considered that its jurisdiction was limited to considering the CPA’s decision on the grounds set out in s.48(1) of the Development and Planning Law (2011 Revision); it had no power to conduct a *de novo* hearing. In respect of setbacks, the PAT considered that the Regulations indicated an intention on the part of the legislature to require buildings over three storeys high to have a setback of 145 ft. from the high water mark.

On further appeal, the appellant submitted *inter alia* that (a) the PAT had erred in law in its interpretation of s.48 of the Law as regards the question of a rehearing; (b) the PAT had failed to consider and determine that the CPA had erred in law in not applying the policies set out in the Development Plan 1997, and it had failed to exercise its own judgment as to whether granting permission would be contrary to the Plan; (c) the PAT had failed to consider and determine that the CPA had erred in law in failing to take into account the adverse comments of the Department of Environment; (d) the PAT had failed to consider and determine that the CPA had erred in its understanding of the regulations concerning setbacks; and (e) there had been procedural unfairness on the part of the CPA: it had not provided the objectors with the comments from the government departments and agencies prior to the hearing of the application, and it appeared that the CPA had been unduly influenced by a previous planning application which it had approved (the objectors had no details about the previous application and were therefore unable to comment on it).

The PAT submitted *inter alia* that (a) the existence of a planning permission or lapsed permission was a

material consideration for a planning authority; and (b) the Plan was to be regarded as guidelines to be applied by the CPA with flexibility, understanding and common sense. The second respondent submitted *inter alia* that the 20-year-old Plan should not be slavishly followed.

**Held**, allowing the appeal:

(1) The CPA had erred in law in its approach to the issue of setbacks and the decision to grant permission was, on the face of it, at variance with the Plan. Regulation 8(10)(e) provided for a minimum setback of 145 ft. for a building of up to seven storeys. No provision was made for buildings of over seven storeys. The CPA was therefore restricted to dealing with buildings no more than seven storeys high until there was an amendment to provide for buildings over seven storeys. There could not be an “anything goes” attitude in relation to buildings over seven storeys. The provision for setbacks was very important in dealing with a building’s proximity to roads and the coastline, particularly on a small island. The age of the Plan was irrelevant as long as it remained in force ([paras. 65–68](#); [paras. 77–81](#)).

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(2) The CPA should have given its reasons in respect of how it had dealt with the question of setbacks (it was incorrect for the PAT to have stated that adequate reasons had been given). It should also have given its reasons for granting permission for a building that was apparently generally regarded as ugly and out of character with those around it. The CPA was not required to give reasons for all its decisions but, given the intensity of the objections in the present case and the obviously informed comments, the CPA should have given its reasons in respect of these matters. Its failure to do so constituted an error of law. In the circumstances, the appellant’s appeal would be allowed, the decision of the PAT would be reversed and the application for planning permission would be refused ([paras. 79–81](#)).

(3) There had been no procedural unfairness. The objectors had been notified of the hearing and given ample opportunity to state their objections. They had taken advantage of the opportunity to provide written objections and reasons. Several of them had attended the meeting and the minutes indicated that their reasons had been stated with much clarity. The objectors had had no need for information from government agencies. The CPA had not been obliged to provide the objectors with more reasons than they stated in their letters of objection. Nor had the CPA been obliged to share with anyone other than the applicant the information that it had received from the agencies (in any event, the objectors could have accessed the agencies’ comments on the CPA’s website). There was also no evidence that the CPA had considered the previous planning application for the site which it had approved. Even if it had done so, however, that would not have been an error of law ([paras. 38–47](#)).

(4) In relation to the appellant’s submission that the PAT had failed to consider and determine that the CPA had erred in law by not applying policies set out in the Development Plan, and that the PAT had failed to exercise its own judgment as to whether permission would be contrary to the Plan, any non-adherence to the Plan would have to be significant and on a matter of great importance to justify overturning planning permission. The foremost consideration was whether there had been general compliance with the Law and the Regulations. The CPA was required to consider the Plan but was not obliged to follow it, especially as the Regulations took priority over the Plan where there was conflict between them ([paras. 55–56](#)).

(5) It could not be said that the PAT had failed to consider and determine that the CPA had erred in law in failing to take into account the adverse comments of any department. The CPA had considered the views of all the departments and of the objectors. Invariably, in matters of this nature, there would be differences of opinion ([paras. 57–63](#)).

(6) Section 48 of the Development and Planning Law (2011 Revision) clearly did not empower the PAT to conduct a *de novo* rehearing. An appeal to the PAT would be considered on the basis of the written record.

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If a rehearing were necessary in the sense of calling witnesses, the PAT could direct the CPA to undertake it ([para. 21](#)).

Cases cited:

- (1) [Cortina Villas v. Planning Appeal Tribunal, 2000 CILR 360](#), referred to.
- (2) *D (Minors) (Adoption Reports: Confidentiality), In re*, [1996] A.C. 593; [1995] 3 W.L.R. 483; [1995] 4 All E.R. 385; [1995] 2 FLR 687; [1996] 1 F.C.R. 205, distinguished.
- (3) *Hadmor Prods. Ltd. v. Hamilton*, [1983] 1 A.C. 191; [1982] 2 W.L.R. 322; [1982] 1 All E.R. 1042; [1982] I.C.R. 114; [1982] I.R.L.R. 102, *dicta* of Lord Diplock considered.
- (4) *New Forest D.C. v. Environment Secy.* (1996), 71 P. & C.R. 189; [1996] J.P.L. 935, referred to.
- (5) *R. (Primary Health Inv. Properties Ltd.) v. Health Secy.*, [2009] P.T.S.R. 1563; [2009] A.C.D. 57; [2009] EWHC 519 (Admin), referred to.
- (6) *Simpson v. Edinburgh Corp.*, 1960 S.C. 313; 1961 S.L.T. 17, *dicta* of Lord Guest followed.
- (7) *South Oxfordshire D.C. v. Environment Secy.*, [1981] 1 W.L.R. 1092; [1981] 1 All E.R. 954; (1981), 42 P. & C.R. 211, followed.
- (8) *Spackman v. Environment Secy.*, [1977] 1 All E.R. 257; (1977), 33 P. & C.R. 430, followed.
- (9) *Vicente v. Communities & Local Govt. Secy.*, [2015] J.P.L. 562; [2015] P.T.S.R. D9; [2014] EWCA Civ 1555, followed.

Legislation construed:

Development and Planning Law (2011 Revision), s.48(1):

“Any person who is aggrieved by a decision of the Authority in respect of an application for planning permission, may . . . appeal against that decision to the Appeals Tribunal . . . and such appeal shall be heard by the Tribunal . . . and determined based on the record of the hearing to which it relates in accordance with any rules made hereunder.”

Development and Planning Regulations (2013 Revision), r.8(10)(e): The relevant terms of this paragraph are set out at [para. 69](#).

*N. Timms, Q.C.* for the appellant;

*S. Bothwell, Senior Crown Counsel* and *M. Brandt* for the first respondent;

*J. Asif, Q.C.* and *P. McFarlane* for the second respondent.

1 **PANTON, Ag. J.:** On December 5th, 2014, the Planning Appeals Tribunal (“the PAT”) handed down its reasons for dismissing the appeals of Grand View Strata Corp. (“Grand View”) and two other parties against the decision of the Central Planning Authority (“the CPA”) to grant permission to Bronte Development Ltd. (“Bronte”) to construct two sets of apartments on land at Snooze Lane, George Town, Grand Cayman. By

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an amended notice of originating motion, dated December 19th, 2014, Grand View filed an appeal against the decision of the PAT. This judgment deals with Grand View’s latter appeal.

2 Grand View is seeking a reversal of the decision of the PAT, and that the “planning permission” granted by the CPA to Bronte also be reversed and refused.

3 Bronte’s application for permission to build was filed with the Department of Planning on October 11th, 2013. Thereafter, that Department issued notices to persons who might be affected indicating that the application was available for inspection by them, and inviting them to object to or support the application if they wished. The Department also notified several agencies of the application and invited comments and/or recommendations from them.

4 There were several objections by property owners, and there were also comments and recommendations by the various agencies. In the end, the CPA granted the application subject to certain stated conditions.

5 The grounds of appeal that were dealt with by the PAT are similar, in substance, to the grounds that were argued with much force and at great length by the appellant before me. I find it convenient at this stage to

summarize what I regard as the main points in the judgment of the PAT. They are as follows:

- (a) The PAT's jurisdiction is limited to adjudicating on decisions made by the CPA on matters that fall within the ambit of the four grounds set out in s.48(1) of the Development and Planning Law (2011 Revision). There is no power to conduct a *de novo* hearing.
- (b) The Regulations indicate an intention on the part of the legislature to require buildings over three storeys high to have a setback of a total of 145 ft. from the high water mark.
- (c) The Regulations provide for a minimum restriction of 20 ft. for side setbacks (with a discretion to increase).
- (d) The CPA acted appropriately in exercising its discretion to vary the setback so that the pool on the existing plans is in alignment with the adjacent property.
- (e) The weight of the comments and recommendations from the various government agencies including those from the Department of Environment was properly assessed by the CPA.
- (f) The CPA fulfilled the requirements of the Law as regards notifying all concerned of the application by Bronte, and there was no breach of the principles of natural justice.

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- (g) The reasons provided by the CPA were adequate, although there is "the need for improvement generally."
  - (h) The Development Plan (see para. 16) has to be viewed in the light of the subsequent amendments to the Development and Planning Law and the Regulations.
  - (i) It is "pure speculation" to submit that the development will have an adverse effect on tourism.
  - (j) The National Conservation Law 2013 was not in force at the time the application was considered, and so could not have formed part of the deliberations of the CPA.
- 6 The appellant is challenging the decision of the PAT on grounds which were filed with the Clerk of the Courts on December 22nd, 2014 and which I also now summarize:
- (a) The PAT has erred in law in its interpretation of s.48 of the Development and Planning Law as regards the question of a rehearing.
  - (b) The PAT failed to consider and determine that the CPA erred in law in not applying the policies set out in the Development Plan, and the PAT failed to exercise its own judgment as to whether or not granting permission would be at variance with the Plan (see para. 16).
  - (c) The PAT failed to consider and determine that the CPA erred in law in failing to take into account the adverse comments of the Department of Environment, and the lack of any environmental study especially given the proposals for underground parking.
  - (d) The PAT failed to consider and determine that the CPA erred in law in applying the wrong test to determine the planning application.
  - (e) The PAT failed to consider and determine that the CPA erred in its understanding of rr. 8(10)(e) and 10(1)(f) in relation to setbacks and side setbacks.
  - (f) There was procedural unfairness on the part of the CPA.
  - (g) The PAT failed to consider and determine that the CPA erred in law and/or unreasonably failed to take into account or evaluate the impact of the development on tourism.

7 Before dealing with the submissions made by the respective parties, I think it appropriate to mention the law and regulations that are relevant for consideration in the determination of applications for planning permission in the Cayman Islands.

8 The foremost piece of legislation that applies to this application is the Development and Planning Law (2011 Revision) ("the Law"). It establishes the CPA and provides a framework for the CPA's consideration of

#### 2016 (1) CILR 233

applications for permission to carry out developments. The Law, at s.6, states that the CPA shall—

- “(a) consider the likely impact of the proposed development on the infrastructure of the Islands as well as on the educational, social, medical and other aspects of life in the Islands;
- (b) consider whether there are other issues of national importance which are relevant to the determination of the application for development and require evaluation;
- (c) consider whether there are technical or scientific aspects of the proposed development which are of so unfamiliar a character as to jeopardise a proper determination of the question unless there is a special inquiry for the purpose;
- (d) identify and investigate the considerations relevant to, or the technical or scientific aspects of, the proposed development which, in its opinion, are relevant to the question whether the application should be approved . . .”

9 In addition, the CPA shall, to the greatest possible extent consistent with its duties, consult with departments and agencies of the Government that have duties, aims or objectives related to those of the CPA (see s.7 of the Law).

10 The Law establishes a department of government called the Department of Planning, and provides for the appointment of a Director of Planning and such other officers as are necessary for the proper exercise of the functions of the CPA. These officers are responsible for the administration of the CPA, including preparing agendas and minutes and communicating and implementing the CPA’s decisions. The Director has a duty to make to the CPA such recommendations as may appear necessary for the implementation of s.4 of the Law.

11 Section 13(1) of the Law provides that, except where otherwise provided for by the Law, permission to develop land shall not be given which would result in development that is at variance with a Development Plan. And s.15(1) authorizes the CPA to grant permission either unconditionally, or subject to such conditions as it thinks fit, or to refuse permission.

12 The relevant regulations for the purpose of this appeal are the Development and Planning Regulations (2013 Revision) (hereinafter referred to as “the Regulations”), with particular reference to rr. 5, 8 and 10 thereof.

13 Regulation 5 provides that the control of development shall be in accordance with these Regulations and the Development Plan, but the

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CPA may give permission for development deviating from the Regulations so long as it is in keeping with the Development Plan.

14 Regulation 8 deals with parking, height of buildings, setbacks and the giving of notices to neighbouring owners.

15 Regulation 10 deals specifically with hotel/tourism-related development. It reads thus, in part:

“(1) Hotels, cottage colony developments and apartments are permitted in Hotel/Tourism development zones if they comply with the following requirements—

- (a) the maximum number of bedrooms for hotels is sixty-five per acre;
- (b) the maximum number of apartments is twenty-five per acre;
- (c) the minimum lot size for hotels and apartments is half an acre with a minimum lot width of 100 feet;
- (d) the minimum lot size for residential development within a hotel zone is 12,500 square feet and the minimum lot width 100 feet;
- (e) the maximum site coverage for hotels and apartments is forty per cent of the lot size;
- (f) the minimum side setbacks are a minimum of 20 feet;
- (g) the minimum rear setbacks are 25 feet from the road edge or lot boundary as the case may be; and
- (h) In the case of a cottage colony development—

- ii(i) the maximum number of cottage units is ten per acre;
- ii(ii) no cottage unit contains more than two bedrooms; and
- ii(iii) the maximum site coverage is twenty-five per cent of the lot size.”

16 The Development Plan 1997 is referred to as a “Planning Statement for the Cayman Islands,” and in the Statement itself it is said that where there is a conflict between the Regulations and the Planning Statement, the Regulations shall prevail:

“The general aim of the plan is to maintain and enhance the quality of life in the Cayman Islands by effectively directing development so as to safeguard the economic, cultural, social and general welfare of the people, and subject thereto the environment.”

The primary objective, according to the Development Plan, is to “maintain and enhance the Cayman Islands and the well-being and prosperity of its

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people subject thereto its environmental character.” The Development Plan states that there is an intention to develop a planning strategy which is flexible enough in concept and implication to accommodate individual requirements, special circumstances as well as changing conditions. There is the requirement for the striking of a “careful balance” “between what is a valuable natural feature and a desirable development.”

17 The Development Plan also contains the following statement:

“The provisions for development setbacks are for achieving the following purposes:

- (a) to provide adequate natural light, ventilation and privacy to all buildings;
- (b) to provide amenity space and to facilitate landscaping around buildings;
- (c) to maintain and enhance the quality and character of development fronting a road;
- (d) to provide a buffer between buildings on neighbouring lots; and,
- (e) to avoid or minimize any negative impact the development or use of one lot may have on the occupants of a neighbouring lot.”

18 In relation to the hotel/tourism zone, the Development Plan states that development “will be carefully regulated to ensure that the needs of the tourist industry are met and that new buildings will in general be related to the needs of the industry.” The Development Plan provides as follows:

“The Authority shall apply the Hotel/Tourism Zone provisions and other relevant provisions of this Statement in a manner best calculated to—

- (a) provide for the orderly development, expansion and upgrading of facilities required to maintain a successful tourism industry;
- (b) ensure that all development enhances the quality and character of the Cayman Islands’ hotels and cottage colonies;
- (c) prevent the over-development of sites and to ensure that the scale and density of development are compatible with and sensitive to the physical characteristics of the site;
- (d) ensure minimal traffic impacts on surrounding properties and existing public roads;

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- (e) ensure that waterfront developments are designed to avoid interference with natural coastal processes; and
- (f) ensure adequate allowance for public access to the sea.”

The Development Plan goes on to say:

“The Authority shall take into consideration the characteristics of the form of tourist accommodation proposed and shall be satisfied that the layout, scale and massing of development are compatible with the ecological, aesthetics, and other physical characteristics of the site; and that a high quality of design and landscaping are used.”

19 Given the conclusion that I have arrived at, I do not find it necessary to deal with each and every ground of appeal in detail. I shall deal only with those points that I think are important for the resolution of the appeal.

20 It became clear to me that the question of the fairness of the procedure was the main topic of discourse by the appellant. The second most important aspect was whether the Development Plan and the Regulations had been complied with, and, finally, there was complaint made in respect of the alleged failure of the CPA to give reasons for its decision.

21 Without going into the submissions, but with great regard for them, I wish to say at the outset that I agree with the PAT's interpretation of its powers under s.48 of the Law as regards a rehearing. The words of the legislation are clear. An appeal to the PAT is to be considered on the basis of the printed record. If there is to be a rehearing in the sense of calling witnesses, the PAT is empowered to direct the CPA to undertake such.

**Alleged procedural unfairness**

22 Mr. Neil Timms, Q.C., on behalf of the appellant, submitted that there was procedural unfairness on the part of the CPA, and that this vitiated the decision. In fact, he said that "the central point by the appellant is the unfairness of the proceedings." The unfairness, he said, was demonstrated in three respects, and the legal position was that it was unnecessary for the objectors to demonstrate a possibility that the decision would have been different had it not been for the procedural unfairness. The three areas of unfairness listed by him were:

(a) The CPA did not provide the objectors with the comments from the various government departments and agencies prior to the hearing of the application by the CPA.

(b) It appears that at the hearing of the application before the CPA, a submission was made on behalf of Bronte comparing the instant application with a previous application that had been approved. The objectors had no details about this previous application so could not have commented

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thereon. The CPA, it is felt, was unduly influenced by this earlier decision although there is nothing in the record to say that it was.

(c) The CPA apparently relied on certain facts which were not disclosed at the hearing. This latter characterization bears some similarity to the complaint in (a) above, so they will be dealt with together.

23 With regard to the comments of the various departments and agencies not being "provided" to the objectors in advance of the hearing, Mr. Timms complained that this was instead done when the minutes "were served." In contrast, he said, it seems that Bronte received all the material before the hearing. This, he said, demonstrated a systemic unfairness by the Planning Department which the CPA has adopted as policy.

24 In their submissions before me, however, counsel for Bronte said that the statement relating to what Bronte had received from the CPA is incorrect. Counsel for Bronte said Bronte did not receive the report of the Department of Environment until at the hearing before the CPA, whereas it seemed that the objectors had been provided with it earlier.

25 Mr. Jalil Asif, Q.C. submitted that the appellant's contention in this regard demonstrates a lack of understanding as to the "planning procedure." The CPA, he said, on receipt of an application, immediately engages in a process of consultation with the applicant and the relevant government departments and agencies with a view to identifying and addressing any concerns raised. After discussions and receipt of comments, the plans submitted by the applicant may be revised as necessary. When the developer's plans have been finalized and submitted to the CPA, the application is then listed for adjudication. Notices are then sent out to relevant parties within a certain radius of the proposed development as required by the Law. They are given a period of 21 days to view the plans and a hearing date is set.

26 The CPA does not distribute the correspondence between itself, the applicant and the various agencies and departments. Mr. Asif submitted that that would be impractical and inappropriate. In any event, the Law,



he said, does not require that to be done. The CPA publishes on its website all the comments of the agencies on the final plans along with a copy of the agenda for the meeting on the Monday prior to the hearing of the application.

27 Mr. Asif pointed out that some objectors and Mr. Timms were at the hearing, but they made no objection or observation in relation to the instant complaint and, in addition, there was no application for an adjournment.

28 The record of appeal shows that Bronte's application for permission to develop the property was filed on October 11th, 2013. On October 18th,

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2013 numerous notices were sent out to the relevant neighbouring property owners indicating the nature of the proposed development and stating that the application "can be inspected at the Planning Department." The location of the Department was given in the notice, and the receiver of the notice was informed that he or she may object or support the application in writing, stating the precise grounds for doing so. This was to be done within 21 working days of October 18th, 2013. The regular postal address, the email address and the fax number of the Director of Planning were supplied in the notice.

29 The Director of Planning received several letters objecting to the application. The objectors articulately stated their reasons for objecting.

30 The Director of Planning then sent written invitations to the objectors to attend and address the CPA on December 18th, 2013. If they were unable to attend, he wished to know whether they would like their objections to be read into the minutes of the meeting.

31 The meeting of the CPA was duly held on December 18th, 2013, commencing at 10 a.m. in the conference room on the first floor of the Government Administration Building. It was the 27th meeting of the CPA for the year. There were 15 members of the CPA present, including the chairman and deputy chairman. There were written comments from the Department of Environmental Health, the Water Authority and the National Roads Authority. Those were read into the minutes, as were also the letters of most of the objectors and the "Planning Department Analysis." Incidentally, each objector had been advised that he or she would be allowed up to 10 minutes to address the CPA. Ten objectors, including Mr. Timms, Q.C., were present at the hearing.

32 As stated earlier, the CPA granted the permission sought subject to conditions which were listed. The CPA, in granting the application, said that it "took into account the comments of the objectors" but was of the view that "they did not raise sufficient grounds for refusing planning permission."

33 On this aspect of its complaints against the decision of the CPA, Grand View relied on *R. (Primary Health Inv. Properties Ltd.) v. Health Secy.* (5), *In re D (Minors) (Adoption Reports: Confidentiality)* (2) and *Hadmor Prods. Ltd. v. Hamilton* (3).

34 The case of *In re D (Minors) (Adoption Reports: Confidentiality)* concerned an application by a mother to inspect two sections of a report of the guardian *ad litem* that expressed in detail the children's wishes and feelings towards their parents. The mother was opposing an application by her former husband and his new wife for the adoption of her two sons. None of the other parties to the proceedings, except the guardian *ad litem*, had been privy to the relevant sections of the report. The judge refused the

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application and the Court of Appeal dismissed the mother's appeal. However, the House of Lords allowed the mother's appeal on the basis that the fundamental principle of fairness that a party was entitled to the disclosure of all materials which might be taken into account by the court when reaching an adverse decision applied with particular force to adoption proceedings. Lord Mustill, in delivering the judgment, said ([1996] A.C. at 614):

“... I am satisfied that the judge erred in giving no weight to the strong presumption in favour of disclosure which, for the reasons given, I believe should prevail in adoption proceedings. It is for this reason that I have concurred in the order allowing the appeal ...”

Earlier, His Lordship had reasoned thus (*ibid.* at 603–604):

“... [I]t is a first principle of fairness that each party to a judicial process shall have an opportunity to answer by evidence and argument any adverse material which the tribunal may take into account when forming its opinion. This principle is lame if the party does not know the substance of what is said against him (or her), for what he does not know he cannot answer. The requirement of openness is particularly important in proceedings for adoption, not only because it may lead to the deprivation of parental rights, in the self-centred meaning of that word, but because a successful application to adopt brings about a total rupture of the mutual relationship of responsibility and dependency which is the essence of the parental bond. The unique character of the relationship which the parent will lose, and the generally irreversible nature of the loss, make it specially important that in simple fairness to the parent he or she is aware of anything which may tend to bring it about. There is more to it than this, however, since fairness to a parent is a reflection of fairness to the child. The erasure of the bond with the natural parent and the creation of an entirely new set of responsibilities and dependencies shared with the adopters is an event of critical importance in the life of the child, whose paramount welfare demands that such a momentous step is taken only after a process which is as fair and thorough as can be devised.”

35 This case ought not to be regarded with any comfort by Grand View as it is related to adoption proceedings specifically. The Adoption Rules provide that a party referred to in a confidential report supplied to the court may inspect that report for the purposes of the hearing, subject to any direction given by the court. In the instant case, there is no provision for the inspection of any communication between the CPA and the government agencies. Furthermore, the objectors were not parties to the proceedings.

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36 *Hadmor Prods.* (3) involved an interlocutory appeal in an action between a television production company and certain officers of a trade union. The judge at first instance refused to grant an injunction but the Court of Appeal reversed him. The House of Lords allowed the appeal. Lord Diplock referred ([1983] 1 A.C. at 232) to the fact that, in the Court of Appeal, Lord Denning, M.R. had looked at sub-s. (8) of s.17 of the Employment Act 1980 “in isolation, divorced from all other provisions of the section of which it formed a part,” and ended up with a conclusion that “could never be reached by applying any of the accepted principles of statutory construction.” In seeking to justify his conclusion, Lord Denning referred to the report in *Hansard* of a speech made in the House of Lords by Lord Wedderburn. In disagreeing with the approach of the Master of the Rolls, Lord Diplock pointed out that Lord Denning had done this before without the support of any other member of the 5-member panel of the Court of Appeal. In fact, two members actually dissented in respect of this approach.

37 So, the quotation relied upon by Mr. Timms, Q.C. from Lord Diplock’s speech (*ibid.*, at 233) is a commentary on what Lord Denning had done. This is what Lord Diplock said:

“Under our adversary system of procedure, for a judge to disregard the rule by which counsel are bound has the effect of depriving the parties to the action of the benefit of one of the most fundamental rules of natural justice: the right of each to be informed of any point adverse to him that is going to be relied upon by the judge and to be given an opportunity of stating what his answer to it is. In the instant case counsel for Hamilton and Bould complained that Lord Denning M.R. had selected one speech alone to rely upon out of many that had been made in the course of the passage of what was a highly controversial Bill through the two Houses of Parliament; and that if he, as counsel, had known that the Master of the Rolls was going to do that, not only would he have wished to criticize what Lord Wedderburn had said in his speech in the House of Lords, but he would also have wished to rely on other speeches disagreeing with Lord Wedderburn if he, as

counsel, had been entitled to refer to Hansard.”

The rule, reminded Lord Diplock (*ibid.* at 232–233), is that “recourse to Hansard is not permitted as an aid to the construction of an Act of Parliament,” and it is the duty of counsel to observe it “in the conduct of their clients’ cases before any English court of justice.”

38 I agree with Mr. Timms, Q.C. that one has to be careful when comparing an objector in the statutory scheme of the United Kingdom with an objector in the Cayman Islands. This, he said, is necessary in considering cases from the United Kingdom. However, I think that the

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case of *Vicente v. Communities & Local Govt. Secy.* (9), cited by Mr. Asif, Q.C., is a useful guide in the determination of the instant point in the matter before me. In the *Vicente* case, which dealt with what is required for procedural fairness in an administrative or quasi-judicial process, Lewison, L.J. said ([2014] EWCA Civ 1555, at para. 32) he did not consider that fairness required that the objectors to an application for planning permission were to be able to listen to every single word that the inspector heard at the hearing. Burnett, L.J. said (*ibid.*, at para. 19) that the circumstances are “necessarily fact and context specific.”

39 In the instant case that is on appeal before me, the objectors were notified of the hearing and given ample opportunity to state their objections. They took advantage of the opportunity to put their objections and reasons therefor in writing. Several attended the hearing. Others indicated in writing that they would not be attending. The minutes of the meeting indicate that their reasons were stated by them with much clarity. They really had no need for information from the government agencies, as their objections were not based on anything flowing from the agencies. They had their own reasons.

40 There was no obligation on the CPA to provide the objectors with more reasons than they stated in their letters of objection. Nor was there any obligation on the part of the CPA to share the information they received from the agencies with anyone apart from the applicant. Furthermore, given the objectors’ apparent level of education and their facility with the computer, I would be extremely surprised if they were not aware of the existence of the website of the Department of Planning and the contents thereon.

41 There was a further allegation of reliance by the CPA on undisclosed matters as regards the location of a commercial development directly across from the site, and Treasure Island being on the same lane as the development. It is interesting that Mr. Timms, in his written submissions, did what he complained of: he provided his own evidence of the location of Treasure Island. In my view, this particular complaint amounts to a mere quibble that can gain no traction.

42 The record of appeal reads thus (at 521):

“Mr. Lagan (for Bronte) explained the previous approval for the subject site and that this proposal is far less dense. He stated that they are prepared to work with the objectors and they feel they have worked hard to reduce the massing of the development.”

43 Mr. Neil Timms, Q.C. said that there is nothing to indicate that the CPA discounted this statement, or regarded it as irrelevant or distinguished. Consequently, he submitted, the CPA appears to have taken it into account.

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44 I cannot say that I am impressed with this reasoning as it does not follow automatically that the failure to mention a matter means that it has been taken into account.

45 Mr. Timms submitted further that the CPA appears to have been unduly impressed by “this prior decision” and so committed an error of law that the PAT should have found. In its judgment, the PAT stated that Mr. Asif, Q.C. had noted that the Chairman of the CPA had expressly stated that the CPA was not bound by an earlier decision of the CPA. Having regard to that, the PAT concluded that it was irrefutable that the CPA had considered Bronte’s application on its own merits. The PAT concluded that the CPA had acted

independently of any previous decision.

46 Mrs. Suzanne Bothwell, who appeared with Mrs. Marilyn Brandt for the PAT, did not agree that an earlier decision of the CPA was irrelevant. On the contrary, she submitted that the existence of a planning permission or lapsed planning permission is recognized by the case law as a material consideration to be weighed by a planning authority. In support of this submission, she relied on the case of *New Forest D.C. v. Environment Secy.* (4). That case contains references to *Spackman v. Environment Secy.* (8) and *South Oxfordshire D.C. v. Environment Secy.* (7). In *Spackman*, it was accepted that the existence of planning permission was a vitally material consideration for a planning authority. In *South Oxfordshire*, it was contended on behalf of the planning authority that where development has not commenced before the time for commencement expires, on a fresh application, the earlier planning permission is no longer a relevant consideration which it is permissible to take into account in deciding whether or not to grant the fresh application. Woolf, J. (as he then was) held that a planning authority was not bound by a previous planning permission. However a pre-existing permission may be relevant or material for consideration, so long as the planning authority does not give it more weight than appropriate. There is a need for consistency, and an expired planning permission is part of the planning history of the site, he said.

47 In the circumstances, it seems to me that this question of the consideration of an earlier planning decision is a non-issue as there is no evidence that the earlier decision was taken into account by the CPA. However, if the CPA did take it into account, there was no error of law in so doing.

**The Development Plan—the Law and the Regulations: alleged error of law by the PAT**

48 The CPA said that in arriving at its decision on the application, it had considered the analysis that had been done by the Planning Department, as well as the provisions of the Law and the Development and Planning

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Regulations (2013 Revision). It formed the view that the application was in keeping with the requirements of the Development Plan 1997, except for the pool setback and the required minimum setback from the high water mark.

49 So, in that regard, the CPA granted permission subject to the submission of a revised site plan showing the required setbacks. The order for the submission of a revised site plan, said the CPA, was to ensure that the 10-storey building was in compliance with the required minimum setback from the high water mark. As regards the proposed pool, the CPA said that there was no need for the setback to be the same distance as the primary buildings as it is a minor ancillary feature which would not affect the neighbouring developments, and that is sufficient reason for allowing a lesser setback from the high water mark. In any event, by increasing the setback from the high water mark to 55 ft., the CPA reasoned that the location of the pool would be consistent with the setbacks of the neighbouring developments.

50 The PAT did not consider it appropriate to substitute its views for those of the CPA, which, it said, had weighed the competing interests and approved the development. The PAT rejected as “pure speculation” the suggestion from counsel for Grand View that the development would have an adverse effect on tourism. There was no evidence to support the suggestion, said the PAT. As regards the character of the neighbourhood, the PAT said that the Development Plan, having been formulated in 1997, and there having been changes in the Regulations since then to permit higher buildings, meant that there would necessarily be a difference in character between the older buildings and the newer ones.

51 Mr. Timms, Q.C. submitted that the PAT erred in failing to find that the CPA had erred in not applying policies stated in the Development Plan. He quoted from the Plan to indicate that there is a requirement that in the zone in question there be careful regulation “to ensure that the needs of the tourist industry are met and that new buildings will in general be related to the needs of the industry.” Those needs, he said, include “those of the condominiums adjacent to the site and the Island generally.” He said, quoting from the

Development Plan, that the CPA had to satisfy itself “that the layout, scale and massing of the development are compatible with the ecological, aesthetics, and other physical characteristics of the site and that a high quality of design and landscaping are used.”

52 The learned Queen’s Counsel was very critical of the CPA, saying the CPA did not consider the Development Plan’s provisions adequately, or at all, and that it either ignored the various heads of consideration or treated them with casual indifference. The CPA, he said, had a responsibility “to prevent overdevelopment of sites (not simply a question of density) and be sensitive to its characteristics and scale.” He added that it had to make a

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series of value judgments using the criteria in the Plan and there is no evidence that it “balanced any of these things.” He was equally critical of the PAT for applying what he described as “its own tortuous reasoning” in order to conclude that the CPA had taken the Development Plan into account.

53 Mrs. Bothwell, for the PAT, noted that the introductory statement to the Development Plan indicates that the Plan is to be regarded as guidelines to be applied with flexibility, understanding and common sense by the CPA. She submitted that there are quite a few regulations that were brought into force after the Development Plan and, in the circumstances, there ought not to be a slavish following of the Development Plan to the exclusion of the Regulations.

54 Mr. Asif, Q.C. also expressed the view that the Development Plan should not be slavishly followed, and that the CPA and the PAT cannot be hidebound by a Development Plan that is 20 years old. He cited the Cayman Islands case of *Cortina Villas v. Planning Appeals Tribunal* (1), in which Sanderson, J. quoted and adopted a passage from de Smith, Woolf & Jowell, *Judicial Review of Administrative Action*, 5th ed., paras. 13–015 – 13–016, at 557 (1995). That passage cautioned against a slavish adherence to government circulars or development plans.

55 Without suggesting at this time that there has been non-adherence to the Development Plan, it may be useful to say that, in my opinion, non-adherence has to be in a significant way on a matter of great importance for planning permission to be overturned. The foremost consideration is whether there has been general compliance with the Law and the Regulations made thereunder.

56 In *Simpson v. Edinburgh Corp.* (6), a case involving planning permission, the legislation provided that where application was made to the local planning authority for planning permission, the authority may grant permission either unconditionally or subject to such condition as it thinks fit, and, in dealing with such application, the authority shall have regard to the provisions of the Development Plan, so far as material thereto, and other material considerations. This is similar to the legislation in the instant case. Lord Guest noted that the legislation obliges the authority to have regard to the provisions of the Development Plan. However, he said that he did not interpret the words “to have regard to” as meaning “slavishly to adhere to.” He said that what was meant was that the planning authority was to consider the Development Plan, but there was no obligation to follow it. This interpretation is quite apt in the instant situation, especially when it is considered that the Regulations take priority to the Plan where there is a conflict.

57 The Department of Environment did not support the proposed development, on the basis that —

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- (a) the scale, mass and density of development is inappropriate for this location and the site’s constraints;
- (b) the coastal setbacks do not reflect the location of the mean high water mark — the siting of the buildings and ancillary structures should be updated based on the mean high water mark; and
- (c) the applicant has not provided sufficient supporting evidence to demonstrate that construction of these buildings is physically feasible.

58 This latter point on the physical feasibility of the buildings seems strange to me considering that the

Department of Planning, which received the plans and which would obviously have in its fold experts in this area, has not raised any concerns in this regard. I hardly think that this can be a proper basis for objection by the Department of Environment. As regards the setbacks, it has already been observed that the CPA gave certain directions when it granted permission with conditions.

59 It is therefore incorrect to put forward the idea that the concerns of the Department of Environment were not considered. The fact that the CPA did not agree with the Department of Environment does not mean that there was no consideration.

60 In respect of the scale, mass and density of the development, the CPA obviously did not see eye-to-eye with the Department of Environment on the matter. There is nothing to compel the CPA to see everything in the same manner in which that department sees it. Were it otherwise, then the Law would not have entrusted the decision-making power to the CPA.

61 When it comes to scale, mass and density, the CPA had other views that it had to take into account. Indeed, the Department of Environmental Health had no objections to the proposal. That department only required that full details on the proposed swimming pool be submitted for review and approval.

62 As far as road capacity issues are concerned, the National Roads Authority said that the impact of the proposed development on Snooze Lane would be minimal.

63 It seems to me that the CPA considered the views of all the departments and the objectors.

64 Invariably, in matters of this nature, there will be differences of opinion. One Grand View objector said that the development is to take place on the last remaining piece of land left over from the development of Treasure Island and Grand View, and that a 10-storey building will look ugly and completely overwhelm the views of this part of the beach. That which looks ugly to the objector will not necessarily be ugly to the CPA which is tasked with the responsibility of making the decision. As one writer puts it: "Ugliness is a point of view: an ulcer may be beautiful to a

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pathologist." It is perhaps more conventional to quote either Lew Wallace or Margaret Wolfe Hungerford and simply say: "Beauty is altogether in the eye of the beholder."

#### **Setbacks**

65 Having considered the Development Plan, the Law and the Regulations, I am concerned as to how the area of setbacks was handled by the PAT and, indeed, the CPA.

66 As stated earlier, the Development Plan states the purposes of the development setbacks, and the Regulations provide the relevant measurements. There was clear concern from the CPA in this regard as it granted permission with conditions, which include a direction for adjustments to be made.

67 The PAT commented on the age of the Development Plan and the fact that the Regulations have been changed over the years. However, the age of the Development Plan is really irrelevant as long as it remains in force. The legislature is fully aware of its existence and its age so if they think it requires updating, they will take the necessary action. In any event, where there is a conflict between the Plan and the Regulations, the latter will prevail. It is my view that there has been no demonstration of any conflict between the Development Plan and the Regulations as regards setbacks. So, I shall take a closer look at what is required.

68 There is no doubt that, in dealing with a building's proximity to roads and the coastline, the provision for setbacks is very important. It is more so, I daresay, on a small island. The relevant Regulations for consideration are r.8(2)(e) and r.8(10)(e) of the Development and Planning Regulations (2013 Revision).

69 Regulation 8(2) deals with the height of buildings in the various zones, with a provision in r.8(2)(e) that the maximum permitted height of a building in this particular zone is 130 ft. or 10 storeys, whichever is less. The application here is for one of 10 storeys. Regulation 8(10) makes various specific provisions for waterfront property, which this property is. In respect of a hotel/tourism zone, as this zone is, r.8(10)(e)

provides that “all structures and buildings up to three storeys . . . shall be setback a minimum of one hundred and thirty feet from the high water mark, with an additional fifteen foot setback for the third through the seventh storey.” Critically, I think, there is no provision for a 10-storey structure. A subsequent amendment in 2014 to this Regulation clarified the measurements for the setback up to the 7th storey by increasing it to 15 ft. for each of the 4th through to the 7th storey; yet nary a word in respect of the 8th to the 10th storey.

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#### 2016 (1) CILR 247

70 Regulation 8(11) gives the CPA the power to grant permission for a setback to be located at a lesser distance than that prescribed in r.8(10)(e). However, in doing so, the CPA must have regard for certain matters such as the elevation of the property and its environs, the geology of the property, the storm/beach ridge, the existence of a protective reef adjacent to the proposed development, the location of an adjacent development and any other material consideration which the CPA considers will affect the proposal.

71 It has to be stressed that this Regulation is very important, in my view. Matters relating to the geology of the property, the storm/beach ridge and the existence of a protective reef cannot be treated lightly, given the nature of the environment.

72 In its analysis, the Department of Planning pointed to the deficiencies in the proposed setbacks, and suggested that the CPA needed to determine if the lesser setbacks could be allowed. It is no doubt due to this suggestion that the CPA directed Bronte to submit a revised site plan with a setback of 145 ft., ostensibly in keeping with the Regulations.

73 Mr. Timms has vigorously challenged the CPA’s decision in this regard and the failure of the PAT to have found that there was an error of law. He submitted that the CPA should have required Bronte to make a new application as there was now “a materially different layout from the site plan.” He said that the new setback should be either 190 or 205 ft., depending on how one interprets the Regulations and/or the subsequent amendment. With that in mind, he said that “the erection of the separate second four-storey building would not be physically possible and/or the application would be fundamentally flawed.” Additionally, he submitted that the CPA did not give any consideration to setback in respect of the storeys above the seventh storey. It ought to have said how it exercised its discretion if it had considered that point, he said. The PAT, he submitted, had wrongly concluded that the CPA had not erred in law in this respect.

74 Mrs. Bothwell submitted that the CPA had followed the Regulations in that the application met the minimum requirements as to setbacks. There is no need for a new application, she said, as Grand View was not contending “that the grant and conditions attached were so far removed from the original application so as to be referable to a different development.”

75 Learned Queen’s Counsel, Mr. Asif, endorsed Mrs. Bothwell’s submissions and added that there is no reason for the setback for a three-storey building to be different from that of a 10-storey one. It is not irrational, he said, for there to be no difference. He differed from Mr. Timms’ position that the taller the building, the greater should be the setback.

---

#### 2016 (1) CILR 248

76 The PAT found that the intention of the legislature was “to require buildings over three storeys high to setback a total of 145 ft. from the high water mark.”

77 I agree with the interpretation put on the Regulations by the PAT. The words in an enactment are to be given their natural meaning. Regulation 8(10)(e) states that there shall be a minimum setback of 130 ft. from the high water mark, with an additional setback for the 3rd through to the 7th storey. Those words are plain and simple. They mean a setback of 145 ft. for a building up to 7 storeys. However, this is a building of 10 storeys, not 7. I reject the idea that there is no need for the contemplation of setback beyond 7 storeys. The limitation in the regulation to 7 storeys means, in my view, that the CPA is restricted to dealing with a building of 7 storeys. This is so until there is an amendment that provides for what is to happen in the case of

buildings over 7 storeys.

78 There cannot be an “anything goes” attitude in relation to buildings over seven storeys, especially when one considers the purpose of setbacks as stated in the Development Plan along with the matters stated in r.8(11).

79 There is another aspect of concern that stems from my considerations in relation to the treatment of setbacks. The proposed development calls for two sets of apartments on the lot. The Department of Planning shares the view of all the objectors that the 10-storey building is not in keeping with the character of the other buildings in the area whereas the 4-storey building is. The Department of Planning also referred to the drawings as depicting a rather architecturally bland building. Given those observations from the Department of Planning, although the CPA is entitled to differ from the objectors and all others, one would expect that the CPA would not only give its reasons for applying minimum setbacks to a project of this size, but also for approving a building that is apparently generally regarded as ugly and out of character with those around it. In particular, the CPA ought to have stated how it dealt with the question of setbacks in respect of the 8th, 9th and 10th storeys, if it dealt with it at all. I am not saying that the CPA is obliged to give reasons for all its decisions. Indeed, there is no requirement in the legislation for this to be done. In the instant case, it may well have very good reasons for its decision. However, given the intensity of the objections and the obviously informed comments of the Department of Planning, the CPA ought to have stated its reasons in respect of the aspects that I have just mentioned. It is incorrect for the PAT to say that adequate reasons were given. It is noted that the PAT added that there was need for improvement generally in this regard. In my view, the PAT ought to have found that the CPA did not do what it should have done in this situation. The PAT erred in this regard.

---

2016 (1) CILR 249

### **Conclusion**

80 I am of the opinion that the PAT erred in not finding that the CPA erred in respect of its approach to the setbacks and in respect of its failure to give reasons on the matters mentioned in the preceding paragraph. I find that there has been an error of law in the CPA’s approach to the question of setbacks, and that the decision, on the face of it, is at variance with the Development Plan. The failure to give reasons in these circumstances amounts to an error of law also.

81 In the circumstances, the appeal is allowed, the judgment of the PAT is reversed and the application for planning permission is refused. I shall entertain submissions in respect of costs.

82 Given what I have said about the nature of this appeal in para. 17 above, it follows that it is not appropriate to grant the relief sought by the appellant’s summons dated April 8th, 2015 seeking permission to adduce additional evidence and for the court to have a site view. Therefore, the appellant’s summons is dismissed.

83 I wish to place on record my appreciation for the helpful detailed written submissions and the very spirited oral arguments of both learned Queen’s Counsel and junior counsel in this matter. Your industry was obvious.

*Appeal allowed.*

*Attorneys: Govt. Legal Dept. for the first respondent; Kobre & Kim for the second respondent.*





## Appendix C

## Popovich, Nicholas

---

**From:** Popovich, Nicholas  
**Sent:** Wednesday, November 8, 2023 2:27 PM  
**To:** Omar McLean  
**Cc:** Popovich, Nicholas  
**Subject:** FW: Notice 28D 128  
**Attachments:** image001.png.html; image003.png.html; image004.png.html; image006.png.html; image007.png.html; image008.png.html; image009.png.html; image011.png.html; image012.png.html; image010.png.html; image013.png.html; image020.png.html; image021.png.html; image022.png.html

Omar  
Please see the objection below to the Astral pre-school  
I will be contacting you with a CPA hearing date in the future  
Nick

## Nick Popovich M.PL, MCIP, RPP, AICP

Planning Officer | Current Planning



**Government Administration Building**  
133 Elgin Avenue | George Town  
P.O. Box 113 | Grand Cayman KY 1-9000 | CAYMAN ISLANDS  
☎ +1 345 244-6501 (Main) | ☎ +1 345 244-6538 (Direct)  
✉ [nicholas.popovich@gov.ky](mailto:nicholas.popovich@gov.ky) | 🌐 [www.planning.gov.ky](http://www.planning.gov.ky)

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---

**From:** Department of Planning <[Planning.Dept@gov.ky](mailto:Planning.Dept@gov.ky)>  
**Sent:** Monday, November 6, 2023 12:22 PM  
**To:** Popovich, Nicholas <[Nicholas.Popovich@gov.ky](mailto:Nicholas.Popovich@gov.ky)>  
**Subject:** FW: Notice 28D 128

---

**From:** Shirley Lauer <[Shirley.Lauer@fostergroup.ky](mailto:Shirley.Lauer@fostergroup.ky)>  
**Sent:** Monday, November 6, 2023 11:18 AM  
**To:** Department of Planning <[Planning.Dept@gov.ky](mailto:Planning.Dept@gov.ky)>  
**Subject:** [EXTERNAL] RE: Notice 28D 128

Good morning Mr Sanderson

Thank you for your response. The Notice may have been sent to the wrong box number if it was sent. My neighbours across and adjacent also did not receive a Notice.

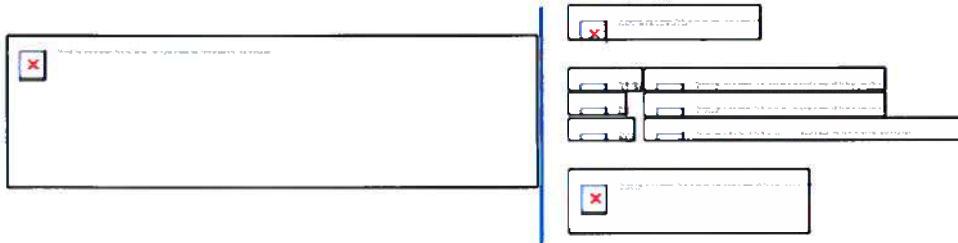
Please accept this communication as my objection to Project P23-0731 Block 28D Parcel 128 for construction of a Preschool on the grounds this is a residential sub-division and would impact on property valuation in the area of the planning site. This is a quiet and safe neighbourhood where I have resided for over 30 years. A business in this residential sub-division will be disruptive causing noise and disturbances f as well as extra traffic and pollution.

I understand my neighbours on Astral Way are also objecting.

Kind regards,

Shirley Lauer

28D 141 63 Astral Way



From: Department of Planning <[Planning.Dept@gov.ky](mailto:Planning.Dept@gov.ky)>

Sent: Monday, November 6, 2023 9:24 AM

To: Shirley Lauer <[Shirley.Lauer@fostergroup.ky](mailto:Shirley.Lauer@fostergroup.ky)>

Subject: RE: Notice 28D 128

**CAUTION: This email originated from outside of our organization! Consider the origin, sender and context carefully BEFORE clicking any links, opening any attachments or replying!**

Good morning,

I've checked our records and I do see that the applicant sent you a notice of the application on October 24, 2023. As such, you are entitled to file an objection to the application. You can email the objection stating your grounds for objecting or you can send same by regular mail.

Kind regards,

**Ron Sanderson**

Deputy Director of Planning | **Current Planning**

Department of Planning | **Cayman Islands Government** | Government Administration Building,

133 Elgin Avenue | **PO Box 113, Grand Cayman, Cayman Islands KY1-9000**

☎ +1 345 244-6504 (Main) ☎ +1 345 244- 6501

✉ [ron.sanderson@gov.ky](mailto:ron.sanderson@gov.ky) | [www.planning.ky](http://www.planning.ky)

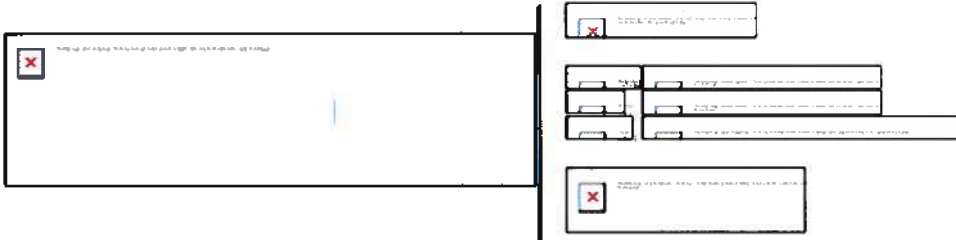
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**From:** Shirley Lauer <[Shirley.Lauer@fostergroup.ky](mailto:Shirley.Lauer@fostergroup.ky)>  
**Sent:** Sunday, November 5, 2023 5:12 AM  
**To:** Department of Planning <[Planning.Dept@gov.ky](mailto:Planning.Dept@gov.ky)>  
**Subject:** [EXTERNAL] Notice 28D 128

I did not receive a notice of this property to be converted from a house to preschool.  
My property is at 28D 141. This is zoned residential. Please advise the process to contest the application.  
Thank you  
Shirley Lauer

Sent from my iPad





## Popovich, Nicholas

---

**From:** Popovich, Nicholas  
**Sent:** Tuesday, November 14, 2023 9:17 AM  
**To:** Omar McLean  
**Subject:** FW: [EXTERNAL] Objection to planning permission  
**Attachments:** image001.jpg.html; image003.png.html

## Nick Popovich M.PL, MCIP, RPP, AICP

Planning Officer | Current Planning



**Government Administration Building**  
138 Elgin Avenue | George Town  
P.O. Box 118 | Grand Cayman KY1-9000 | CAYMAN ISLANDS  
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✉ [nicholas.popovich@gov.ky](mailto:nicholas.popovich@gov.ky) | 🌐 [www.planning.gov.ky](http://www.planning.gov.ky)

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---

**From:** Pandohie, Haroon <Haroon.Pandohie@gov.ky>  
**Sent:** Tuesday, November 14, 2023 9:09 AM  
**To:** Alison Arch <alison.arch58@gmail.com>  
**Cc:** Department of Planning <Planning.Dept@gov.ky>; Popovich, Nicholas <Nicholas.Popovich@gov.ky>  
**Subject:** RE: [EXTERNAL] Objection to planning permission

Dear Ms Arch,

I note your objection. The assigned planner, Mr Popovich, will be in further contact regarding the next steps once your submission is reviewed and validated.

With kind regards,

Haroon L. Pandohie, MCRP, MBA, AICP  
**Director of Planning**



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---

**From:** Alison Arch <[alison.arch58@gmail.com](mailto:alison.arch58@gmail.com)>  
**Sent:** Monday, November 13, 2023 7:54 PM  
**To:** Pandohie, Haroon <[Haroon.Pandohie@gov.ky](mailto:Haroon.Pandohie@gov.ky)>; Department of Planning <[Planning.Dept@gov.ky](mailto:Planning.Dept@gov.ky)>  
**Subject:** [EXTERNAL] Objection to planning permission

**OBJECTION TO APPLICATION FOR PLANNING PERMISSION - BLOCK AND PARCELS 28D 128 AND 28D 130**

Dear Mr Pandohie,

I am the owner of 89 Astral Way, Savannah (28D 143) Although I have not received a notification to object, regarding the proposed pre-school in the house at the above mentioned property, I am greatly concerned about the impact this will have on the amount of traffic generated, if approval is granted, on this generally quiet residential road.

There is no direct access onto Astral Way from Shamrock road so the traffic will also impact, Bougainvillea, Seaview and Galaxy Way plus the slip road by Dominoes Pizza if approaching from the East. We already have an issue with cars speeding around the bend by my house on occasion, especially when the traffic is re-routed off Shamrock Road in this vicinity for some reason.

As far as the re-zoning to commercial/residential, this will undoubtedly devalue many of the properties in the vicinity. Many residents have owned either the houses or land for many years and I feel strongly that this would not be a fair change to make. Should the pre-school have to close for any reason, a commercial zoning would leave opportunity for pretty much any business to be run from that property or any other premises come to that and would destroy the quiet country feel, which is why the residents have chosen to live in this area.

Please take into consideration the objections raised. I think they are fair.

Could you please also inform me as to why I did not receive notification to object to the proposed planning permission application.

Thank you for taking the time to read this email.

Kind regards,

Alison C Arch



## Popovich, Nicholas

---

**From:** Pandohie, Haroon  
**Sent:** Tuesday, November 14, 2023 9:07 AM  
**To:** jade arch  
**Cc:** Department of Planning; Popovich, Nicholas  
**Subject:** RE: [EXTERNAL] Objection to Application for Planning Permission - Block and Parcels 28D128 and 28D130

Dear Ms Arch,

I note your objection. The assigned planner, Mr Popovich, will be in further contact regarding the next steps.

With kind regards,

Haroon L. Pandohie, MCRP, MBA, AICP

**Director of Planning**



**DEPARTMENT OF PLANNING**  
Cayman Islands Government

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---

**From:** jade arch <jadearch1@gmail.com>  
**Sent:** Friday, November 10, 2023 4:30 PM  
**To:** Department of Planning <Planning.Dept@gov.ky>; Pandohie, Haroon <Haroon.Pandohie@gov.ky>  
**Subject:** [EXTERNAL] Objection to Application for Planning Permission - Block and Parcels 28D128 and 28D130

Dear Mr. Pandohie,

I am the owner of block and parcel 28D142 and I wish to object to the application for the change of use from a house to a preschool on block and parcels 28D128 and 28D130.

Given that the road is residential, my grounds for objection are as follows:

**Traffic:** there is no direct access from Shamrock Road onto Astral Way, especially coming from West to East where the option to turn right by Wendy's is prohibited. This will result in an a significant increase of through traffic accessing Astral way (past all of the houses) from Bougainvillea and Galaxy Way etc. This is an existing issue a long with speeding, which will no doubt increase.

**Zoning:** if the area is to be re-zoned to commercial, this increases the possibility of future problems for example, should the preschool close, as many do, the property could be used in another commercial manor. Should this happen, residents could also face **devaluation of property** depending on what that new use of property is

This is a very quiet residential area and all land / homeowners have purchased and kept their properties based on this. Most of whom have been there for 10+ years. The property owner of the proposed preschool I'm sure can appreciate this and hopefully considered that there might be a chance that there would be fair objections.

Please fully consider the points made.

I do hope you enjoy the long weekend.

Kind regards,

Jade Arch

*Address: PO Box 1192, Savannah, KY1-1503*

DELORIS CAMERON

58 ASTRAL WAY

SAVANNAH

345-549-0355

Director of Planning

P.O. Box 113

Grand Cayman

KY1-900

Cayman Islands

November 6, 2023

**28D128, 28D130**

Dear Sir/Madam,

This letter is objecting to changing the house on the above lots to Preschool and Storage.

I have already emailed but thought it necessary to hand it in writing. My block and Parcel is 28D132, P.O. Box 12064, KY1-1010 and my objections are as follows:

1. Practically all schools have parking inside the property for staff and leave parking outside for parents and guests. Even if there is a drive - through to drop off the children there will still be not enough space therefore the road will be blocked. Astral Way is already blocked with cars from Chill Spot and the Church.
2. The noise level will disrupt the area and even more as I am next door. I already have noise coming from the basketball court at the Church.
3. There will be a significant increase in traffic on this road and as it is people speed there and use the road as a shortcut from the main road traffic.
4. The overflow from the drop off area will be dangerous not only for the children but also the adults.
5. This will no doubt decrease the value of homes in this area.

Regards,



Deloris Cameron





dforchin@yahoo.com

ROBERT CAMERON

58 ASTRAL WAY

SAVANNAH

345-549-0355

Director of Planning

P.O. Box 113

Grand Cayman

KY1-900

Cayman Islands

November 6, 2023

**28D128, 28D130**

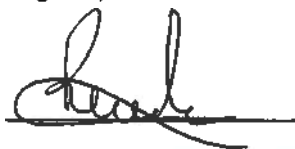
Dear Sir/Madam,

This letter is objecting to changing the house on the above lots to Preschool and Storage.

I have already emailed but thought it necessary to hand it in writing. My block and Parcel is 28D132, P.O. Box 12064, KY1-1010 and my objections are as follows:

1. Practically all schools have parking inside the property for staff and leave parking outside for parents and guests. Even if there is a drive - through to drop off the children there will still be not enough space therefore the road will be blocked. Astral Way is already blocked with cars from Chill Spot and the Church.
2. The noise level will disrupt the area and even more as I am next door. I already have noise coming from the basketball court at the Church.
3. There will be a significant increase in traffic on this road and as it is people speed there and use the road as a shortcut from the main road traffic.
4. The overflow from the drop off area will be dangerous not only for the children but also the adults.
5. This will no doubt decrease the value of homes in this area.

Regards,



Robert Cameron







**From:** Corey Anderson <canderson.ctmh@gmail.com>  
**Sent:** Friday, November 10, 2023 9:26 AM  
**To:** Sanderson, Ron; Popovich, Nicholas  
**Subject:** [EXTERNAL] Opposition to Project P23-0731Block 28D Parcel 128

**Dear Sir,**

I am writing to inform you that we were made aware by our next door neighbor that there is a proposition Project P23-0731 Block 28D Parcel 128 for conversion to Preschool and Storage Facility. Hence rezoning from Residential area to Commercial/Residential .

We live on Astral Way Block 28D Parcel 134. This is a notice of OUR OBJECTION and also to inform you that we were not made aware neither by registered mail; regular mail nor email of this proposition which is very disappointing, considering we have owned our property for 14 years and built our home in 2017 and have been living in the neighborhood for the past 5 years.

We find it very disheartening and are a bit perturbed to have to defend our OPPOSITION for the proposed change.

1. My husband and I feel we should not even be in this position. Considering that when we purchased our land many years ago. This area was listed as Residential Area. If it was zoned as Commercial /Residential or had a Pre-School/Storage area at time of purchase we would not have even considered purchasing in the area.
2. A change would bring about increased in Traffic congestion and infringe on Privacy and Safety of those who live in this neighborhood. We all know each other and are neighbors and having multiple persons accessing to drop off and pick up their children. We all think it would be hard to differentiate who is





accessing for Preschool purposes vs someone who means to access for criminal purposes. We all work hard and our homes are our place of Peace and solace away from the hustle and bustle of life. We are continuously concerned about increased in crime that is occurring in Cayman and having our Privacy and Safety affected by this proposition is worrisome to all living in the neighborhood.

3. Noise congestion is also a concern. I have always advocated for children. I am a Pediatric Nurse whose life is dedicated to Children and serving others. I work shifts. My shift varies from 7am to 7pm and 7pm to 7am. When I am on night duty I already find it challenging to sleep days because our bodies are made to sleep at night time. Going against circadian clock is already a challenge in itself. Plus the hustle and bustle of daily life around with gardeners mowing lawns etc. I am a light sleeper so the least amount of noise disrupts my sleep. The idea of cars coming in and out and with their loud mufflers and music and increase in noise around will disrupt my rest and ability to be at my best and can negatively affect my ability to do my job at my absolute best.
4. We as well as our other neighbors are concerned about De-valuation in our Property Values. This area has always been zoned as Residential. Having a change in Zoning and converting the house to Pre-School and Storage area as we all know would bring about one's ability to Sell their homes if they so wished.
5. To those in charge of approving the proposition and to Ms Luana I ask you to please put yourselves in our Situation. I am sure if this was a proposition in your neighborhoods we guarantee that you all would vehemently oppose. I ask Ms Lookloy if she still proposes the rezoning and continue to challenge our opposition to her proposal to perhaps consider purchasing a house in her lovely neighborhood and Re-zone and build her Preschool/Storage area there instead and kindly leave our neighborhood as we already are...Residential and safe.

Kind regards and Blessings



## Popovich, Nicholas

---

**From:** Department of Planning  
**Sent:** Friday, November 10, 2023 9:28 AM  
**To:** Popovich, Nicholas  
**Subject:** FW: [EXTERNAL] OBJECTION TO CHANGE OF USE 28D128,28D130  
**Attachments:** image001.jpg.html



---

**From:** cofewcrm@candw.ky <cofewcrm@candw.ky>  
**Sent:** Thursday, November 9, 2023 11:30 PM  
**To:** Department of Planning <Planning.Dept@gov.ky>  
**Cc:** 'Nigel' <NBerry@bsw.ky>  
**Subject:** [EXTERNAL] OBJECTION TO CHANGE OF USE 28D128,28D130

Dear Sir,

I am contacting you on behalf of property **28D133** where I currently reside.

I hereby **OBJECT** to the application to change the use of 28D128 and 28D130 from a residential house to a Preschool and storage, complete with small sign, parking lot, new septic tank and low fence for a myriad of reasons.

First and foremost, this area is (and historically have always been) a **Residential Area** with no commercial activity, per se, save for the Church which I hesitate to even categorise as "Commercial". Although the Church is not deemed to be a Residential structure either, it is very much a part of the neighbourhood and enhances our community-driven spirit and unlike a Preschool, the Church's main activity is limited to once (or on occasion twice) per week for a few hours, whereas a Preschool would be so much more, not just the five(5) days a week but also for the entire day; sun-up until sundown each day!

Upon purchase of the property in this Residential Area of Savannah, I understood (and seem to recall written into the purchase agreement) that certain covenants applied, which included any build/construction to be single-family dwelling and meet a minimum square footage. It was an expectation that there would be a certain standard met and/or quality maintained to ensure that not only your own dwelling house and property value would not depreciate but also that of your neighbour's and the neighbourhood in general. Although one of the positive attributes when planning to build or purchase a home in a particular area is not just the quality of the area but also the convenience and availability of concessions in the area, having a School close or nearby is generally a positive but that is the operative word – something being 'close' or 'nearby' usually denotes having access within a short distance, either walking or driving - it does not mean to be immediately next door to your abode, especially in an area that is comprised entirely of single-family dwelling homes.



**This area of Savannah continues to thrive given the Primary School, Post Office, Fueling Station and various amenities provided by the Shopping Complexes (all immediately located on the main road) and because of this, the area has become known as the Hub of traffic congestion where everything connects. Our neighbourhood side roads and back roads is already plagued with non-local vehicles who exit from the main road (Shamrock) to cut through using these connected back and side roads in the neighbourhood to then try and exit back onto Shamrock further on to avoid the central intersection where the bottle-neck happens as much as possible. I do not need to express the issues which this creates in itself with these vehicles traveling at speeds that are not warranted through a residential area with families, children at play and the elderly walking their pets. As it stands, these connected roads in our neighbourhood are somewhat restricted and inadequate as 2-way travel has to be approached with extreme caution at all times. Our neighbourhood roads have not been designed for proper 2-way traffic and to have any increase in usage with changing the neighbourhood dynamic to accommodate something of this nature will not only be added stress to an already fragile infrastructure but the added parking congestion, increase traffic and noise pollution is not something that is an attractive attribute for a Residential Area, nor what a long-term resident would expect their neighbourhood to be turned into.**

**In short, making a change in this manner to a single-family dwelling home in a Residential Area will negatively impact the quality of our neighbourhood and our standard of living as a property owner. It will not only directly diminish our property value but moreover, the long-term intent of having and being accustomed to a certain environment in which you have lived and continue to make an investment in your forever home. This area was not intended for an establishment of this sort and I am struggling to think why anyone in good conscience would think that this is acceptable by any means.**

**Kind regards,**

**[Tammy W. Seymour](mailto:cofewcm@candw.ky) | P.O. Box 314 Grand Cayman KY1-1104 | Cayman Islands | ☎: 345-916-9879 | 📠: 345-946-3172 | 📧: [cofewcm@candw.ky](mailto:cofewcm@candw.ky)**





## Appendix D

The Chairman  
C/O the Executive Secretary  
Central Planning Authority  
Government Administration Building  
Elgin Avenue, George Town  
Cayman Islands

BY EMAIL

28 February 2024

Dear Sir,

**Re: Proposed Change of Use From House to Preschool and Storage on Block 28D  
Parcel 128 & 130 – P23-0731**

We are instructed by Dr. Luana Look Loy, the applicant in respect of the captioned application for planning approval to allow her to open a much-needed pre-school in Savannah.

We have reviewed the objections that have been filed and have been instructed to respond in relation to the same, as well as to outline our client's legal position in regards to the application in the context of the relevant provisions of the Development and Planning Legislation and established planning jurisprudence.

Firstly, as a matter of housekeeping, there is one objection which was filed by a Tammy Seymour in her capacity as a resident of Block 28D, Parcel 133, which parcel is actually registered in the name of JBF International Ltd. Given that the relevant provisions of the Development and Planning Regulations [Regs 8(12E) and 9(3)] make it clear that only an owner of land within the relevant notification radius/radii are able to object, only the registered proprietor or leaseholder would enjoy the legal standing required to object. Therefore, that particular objection letter should be disregarded and that objector should not be permitted to participate in the hearing of the application as she lacks *locus standi*.

It is also important to note that some of the objectors seem to be of the impression that the applicant is seeking to "rezone" the subject parcels, and furthermore many have mischaracterized the proposed change of use of the existing development from residential to a preschool somehow constitutes "commercial" activity.

**Nature of Application**

The application is primarily for a change of use from the previous approved and existing residential accommodation. There is no major or even significant



construction works involved and most of the physical development will either be internal renovations, which are exempt from planning permission pursuant to Section 13(3) of the Development and Planning Act, or otherwise simply involve reconfiguring and/or expanding parking spaces to accommodate the proposed change of use and creating amenity spaces for the children to play, such as a sandbox with play equipment. Suffice it to say, there will not be any major construction works that would normally accompany the creation of a new preschool facility.

### **Definition of Proposed Land Use – Institutional NOT Commercial**

It is also important to note that subsequent to 1997, when the original Development Plan and the attendant provisions of the Development and Planning Regulations were first significantly amended, a new zone called the “Institutional Zone” was created. However, despite the fact that we created the provisions for such zoning, in the form of what is now Regulation 14 of the Development and Planning Regulations, which defines the primary use of such zones to be, *inter alia*, for educational purposes, the Legislative Assembly did not create, and Parliament has not yet since created, such zoning on any vacant land. In this regard, the plan has failed its purpose. This presents a serious challenge for any new development which can be classified as institutional use, including essential public and civic buildings, in that, this practically requires any new institutional development to be situated in another zone.

### **Zoning - Compatibility**

The Low Density Residential Zone (“LDR”) is the single largest zone on Grand Cayman and every district of the Island has a significant amount of LDR zoning. The LDR zone is highly compatible with social and educational use as it is also the most versatile zone, in terms of number of different permitted existing land uses, and literally thousands of planning permissions for uses other than residential being legitimately granted by successive CPA boards over the past four decades. This ranges from commercial to heavy industrial uses, including quarries, and everything in between. This, however, is not incongruent with the Development Plan and is provided for in the attendant Regulation 9. Section 1.4 of the Development Statement itself (page 4) provides:

*“the designated land use of each zone is not in any way inflexible.”*

It is therefore suggested that this should always be borne in mind when evaluating the validity of complaints of “incompatibility” with the designated residential use inherently imposed by LDR zoning, since such zoning is in fact compatible with

educational and social use. It is further submitted that the proper approach is to follow the obvious general intent of the Plan and the relevant provisions of the Regulations, which in this case would be regulation 9(3), which clearly provides that any adjacent landowner must raise cogent grounds that are sufficiently valid to satisfy the CPA that a refusal is warranted.

### **The Proper Approach to Considering Planning Permission**

The aforementioned provisions in simple terms would dictate that the CPA should follow the established rule in civil matters which is that “he who asserts must prove his assertion”. This places a tacit onus on any person making an assertion to establish what he or she is saying is the position. Complaints such as “this development will cause traffic problems” or “the proposed change of use will damage my property values” need to be substantiated by the persons who makes the proposition. Saying it is so does not make it so.

Moreover, it is submitted that the position at common law is clear and has been well established, that is to say, that development should generally be permitted unless there a demonstrable harm to a material planning interest. Furthermore, the notion that there is some sort of burden on an applicant to prove the worthiness, utility, need, etc. of his or her development is a misconstruction of the position at law and is an affront to the long-established jurisprudence in regards to planning control under our legislation.

The Development and Planning Law was not created out of thin air. It was adopted from very similar legislation that was promulgated throughout the commonwealth since circa 1947, namely the Town and Country Planning Act of 1947. And we have a long line of decisions both here and in the UK that define how planning matters should be properly determined. One of those decisions is the case of Cranford Hall Parking Ltd. v. Secretary of State [1991 1 EGLR] 283 (Appendix 1). In that case, one of the preeminent authorities on English planning law, Mr. James Marder, QC, succinctly set out in his judgment, following another significant decision by another planning lawyer of similar competence, Widdecombe, J. in the case of *Pye*, that “...at the very heart of the control of development in the 1971 Act, and of course, its predecessors, there is the discretionary power to refuse permission for development of an owner’s land and that power is exercisable, as a matter of law, only on good, sufficient and lawful reasons being shown for the refusal.”

It is submitted that what all of this means in simple terms is that the Authority only has discretion to *refuse* planning permission if it has in front of it facts which are established by the objectors, or verified through some other credible source, which amount to clear, cogent reasons that justify exercising that discretion to refuse. Put

another way, there is effectively a presumption in favour of granting planning permission unless the Authority is satisfied that there are clear reasons established for refusing such permission, and such reasons must dictate that the proposed development will cause harm to a material planning interest.

Obviously, one must also consider that the Authority is also bound by the provisions of Section 19(1) of the Cayman Islands Constitutional Order, in that, all of its decisions must be lawful, rational proportionate and procedurally fair.

Therefore, the Authority must very carefully consider whether the objections are valid, based on a rational evaluation of those objections.

We would submit that the objections are largely, if not entirely, based on the typical speculative conjuring up of fears of the unknown, manifested as the usual NIMBY objections, as if a preschool were something akin to a dance hall or barroom or some type of heavy industrial activity with its well-known inherent nuisance impact.

#### **The Applicant's Basis for Making the Application**

Upon having her first child, our client was extremely surprised to find herself in a situation which many parents in Grand Cayman sadly face, being placed on multiple pre-school waiting lists with little hope for receiving a spot for her child.

As the Authority will no doubt be aware, the Cayman Islands Government does not provide public pre-school facilities. As a result, prior to elementary school enrollment, the only option available to parents in the Cayman Islands is to enroll their child in a private pre-school, or to make arrangements for someone to care for their children at home. In reality, this usually means hiring a Domestic Helper, which not only causes an administrative burden, but who are often not trained in childcare and/or education and have other responsibilities in the household.

Unfortunately, there are not enough private pre-school seats available for even half of the pre-school aged children in the Cayman Islands. Having one of the world's highest costs of living, it is a reality that most parents in the Cayman Islands consist of two working parents. In order to provide income for their families, parents urgently require access to more quality childcare. The lack of availability of adequate pre-school seats causes not only considerable emotional and financial stress to parents but also pushes people to consider placing their young children into unregistered early childhood "centers" (see Appendix 2). Furthermore, it has been scientifically proven that the early years of children's lives are the most important time when the foundations for learning are built through purposeful play in safe, stimulating, learning environments, with the support and guidance of trained

educators and the social interaction of peers. The long-term benefits of early childhood education through certified pre-schools are critical to the educational success of future generations. The need for the approval of this type of development is evidenced by the letter of the Ministry of Education of 1 February 2024 which letter expresses the Ministry's strong support for 'any projects related to the development of Early Childhood Care and Education Centres'. (Appendix 3) As evidenced by that letter, there are currently 857 children on waiting lists for pre-school spots in Grand Cayman. Additionally, this situation will be drastically exacerbated in the next few years as the birth rate increased by 25% after 2020, fueling Cayman's childcare space crisis. (Appendix 4) This is a socially untenable situation for the Cayman Islands and if left addressed this will be detrimental to the general welfare of the people of Cayman.

Another matter which affects the lives of the people of the Cayman Islands on a daily basis is traffic. As the population of the Cayman Islands continues to grow, it would seem intuitively imperative that development control should focus on providing educational opportunities within resident's local districts so as to reduce traffic, by reducing the travel distance and duration of time spent on the roads. In so doing, it would be possible to mitigate motor vehicle traffic traversing the existing high traffic bottle neck areas, such as the outskirts of George Town. There are currently 28 private pre-schools on Grand Cayman. Of these, approximately 75% of those are located in George Town. In stark contrast, the district of Bodden Town, which is the single fastest growing district in Grand Cayman only currently has less than 7%, with only two preschools. In 2022, ESO statistics indicate that the approximately 17,000 people resided in Bodden Town. (Appendix 5) Clearly, given that size population, Bodden Town currently has a need for more pre-schools and locating such facilities as near as possible to the homes of the children who will attend them would appear to be beneficial to the general welfare of not only the children and their parents, but by mitigating traffic, to a large section of the public. It seems both unconscionable and detrimental to public interest on the whole that most parents residing in the eastern districts of Grand Cayman are forced to drive their children to pre-schools located in George Town, adding unnecessary traffic to the already overly-congested rush hour traffic, not to mention the inherent adverse impact on quality of life.

Furthermore, with rising population numbers, additional private schools will take some pressure off of the Cayman Islands Government as educational facilities for the population comprise vital infrastructure, which gap would otherwise need to be filled by government spending. (Appendix 6) Indeed, the government has had to recently step in to provide nursery spaces at the East End Primary School due to not only lack of available spaces, but due to the lack of such private facilities in the Eastern districts of Grand Cayman. There are no pre-schools in North Side. (Appendix 7)

### **The Development Plan**

The Development Plan 1997 for the Cayman Islands provides at clause 1.2 of the Planning Statement that the general aim of the plan is to maintain and enhance the quality of life of the Cayman Islands by effectively directing development so as to safeguard the economic, cultural, social and general welfare of the people.

It is submitted that it is a matter of fundamental social and general welfare that children in the Cayman Islands have adequate access to pre-school educational facilities. Furthermore, it is a matter of general social welfare that educational facilities are available in more districts in order to prevent additional traffic and the negative social consequences of the same on the general population.

### **Educational Development in Residential Zoning**

Contrary to the objector's concerns, the proposed application for educational facilities in a residential zone does not constitute a "re-zoning" of the property to commercial use. The property will at all times remain residential zoning so any concerns about future use of the property for other commercial purposes is misplaced.

Regulation 9(3) of the Development and Planning Regulations (2022 Revision) provides that educational development may be permitted in suitable locations and if the application has advertised details of the application twice in a newspaper, and there are no objections from an adjacent owner which the Authority regards are raising grounds for refusing the permission.

Firstly, to address the question of suitability, the proposed development is located on Astral Way, one parcel away from the edge of the Neighbourhood Commercial Zone that contains businesses such as the Wendy's restaurant and Rubis Gas station. It is in close proximity to the main arterial highway, namely Shamrock Road, the Countryside Shopping Village, Savannah Post Office and Savannah Primary School which students of the proposed pre-school are likely to feed into. In terms of location, the proposed site is ideal as it offers a central location in Savannah for ease of access of local families residing in the Savannah area. The NRA has also confirmed that the traffic impact on Astral Way will be minimal and it is obvious from considering the position of the subject site in juxtaposition to the properties of the objectors, that the objectors are unlikely to see any significant increase of the traffic that visits the preschool, since the objectors properties are all located further South along Astral Way. (Appendix 8)

Furthermore, regulation 14(2) of the Development and Planning Regulations permits educational facilities “in any zone where they meet the needs of the community”. For all of the aforementioned reasons, and as stated by the Ministry of Education, there is a clearly demonstrated urgent and significant need for additional early childhood educational facilities. This is particularly important in the Savannah/Bodden Town area as it is the fastest growing district in Grand Cayman.

### **Parking**

The Development and Planning Regulations do not prescribe any set parking requirements for pre-school facilities. Parking requirements are therefore at the discretion of the Authority, based on what is reasonable under the circumstances.

Following consultations with the NRA, our client’s application was amended to provide additional parking spaces and the application now includes 14 parking spaces as well as a primary-use, one-way, “drive-thru” drop-off/pick-up loop.

With regard to previous applications for pre-school developments, the Authority has applied a variety of standards, presumably based on the particular circumstances of each application.

On 12 April 2022, in respect of application P22-1152, for a pre-school in LDR zoning in West Bay, the Department of Planning applied the Institute of Transportation Engineers (2010) Parking Generation, 4<sup>th</sup> Ed whereby day care centers, which include pre-schools, average a parking supply ratio of 3.5 spaces per 1,000 sq/ft. In respect of our client’s application, this would require 14.35 spaces.  $((4,175/1000) = 4.1 \times 3.5 = 14.35 \text{ spaces})$  Our client has provided 14 spaces plus the “drop-off/pick-up” drive thru lane.

On 9 March 2022, in respect of application P21-1295, for the purposes of a large primary school, the Institute of Traffic Engineers parking guidelines were applied to require 0.2 parking spaces per student. In respect of our client’s application, this would require 10 parking spaces. Our client is providing 14 spaces.

If parking requirements for the pre-school were to be based on the requirements for Commercial use requirements of Regulation 8 (1/300 sq/ft), the proposed development would require 13.91 spaces. Our client has provided 14 spaces.

It is therefore submitted that, in accordance with the Authority’s previous decisions, and under all of the circumstances, our client’s proposal for 14 parking spaces in addition to a dedicated “drop-off/pick-up” drive thru lane provides sufficient parking and drop-off/pick-up area for the proposed development.

## **NRA Sidewalk**

Our client notes with concern the NRA's suggestion that our client installs a sidewalk inside of the parcel boundary. For a number of reasons this suggestion is not only unlawful but also unreasonable and unnecessary in respect of the subject application.

Firstly, this is not a new development site and the building and roadside wall are existing structures which are not intended to be moved or modified structurally by the Applicant, as this would significantly impact the viability of the project. It would therefore be unreasonable (and unlawful) and would achieve no sensible planning purpose to require our client to tear down the existing concrete boundary wall to provide a sidewalk.



Secondly, there surrounding developments do not provide sidewalks whereby the development of a sidewalk along our client's boundary would be useless as it would fail to connect to any surrounding sidewalks. Furthermore, our client has attempted to maintain the classic residential appearance of the existing development.

Finally, neither the NRA, nor the Authority have the statutory power to effectively dispossess our client of her private land, nor to impose such an unjustifiable interference with her property rights for the purposes of providing a public sidewalk, without such statutory power and without Constitutionally mandated prompt and adequate compensation. The NRA's current policy of inveigling the CPA into securing public sidewalks vis-à-vis a planning condition to that effect on the basis that such is "good planning practice" is anything but good planning practice, as it is a flagrant breach of the law and the Constitution and amounts to an unlawful dispossession of private property by a statutory authority. If indeed the NRA has rationally determined that there is a need to provide for public pedestrian traffic in that area, then it is under a duty to convince Cabinet to acquire such land as is necessary for

the same and to pay the statutorily required and constitutionally mandated compensation for the land thereby acquired. Therefore, IF the NRA wishes to acquire our client's private land for the purposes of the proposed sidewalk, then it must do so in accordance with the Roads Law and it must initiate the process pursuant to the usual section 3 Roads Law notice. Otherwise, any mandatory requirement by the Authority to provide public sidewalks over private land is *ultra vires* the Development and Planning Act and Regulations and would constitute a breach of paragraph 15 of the Bill of Rights pursuant to the Cayman Islands Constitution Order.

### **Concerns of the Objectors**

Our client notes the concerns of the objectors which can be summarized as concerns in respect of noise, traffic, implications of commercial "re-zoning" and crime.

Traffic concerns have been addressed in the submissions above and by the NRA. As a small pre-school, the traffic effects on the neighborhood in question would obviously be minimal and would only occur two times a day, when parents drop off and pick up their children. Additionally, the question of traffic should also take account of the fact that many of Cayman's serious traffic issues are a result of centralization of educational and employment facilities in George Town. By providing more small educational facilities in the Eastern districts, particularly in Bodden Town, some of the pressure of having to commute to George Town can be alleviated, thereby positively affecting traffic Island-wide, particularly during peak hours.

It is submitted that schools have always been contemplated and most have been built in residential zones, even the ones that existed in 1997 that were then redesignated as "Institutional" zones. As outlined above, given that a "spot-zoning" approach was implemented in 1997 whereby the institutional zones were created in recognition of existing educational facilities and other public and civic buildings, this has created the lack of sufficient "institutional" zoned land for development of such land use in the Development Plan. Clearly, this was a flawed approach, as the intended purpose of development plans must be forward-looking and zoning based on existing use is therefore of very limited utility, save for any future re-development. Regardless, Regulation 9 (3) clearly permits such development and regulation 14 clearly indicates that the legislative intent was always to provide educational facilities in all zones, as appropriate.

In respect of noise, it is submitted that unlike a commercial enterprise such as a restaurant/bar, or industrial use, the noise generated by a small pre-school is insignificant, consisting primarily of the sounds of children playing outside for a few hours a day, at most, since most school time is spent indoors. Furthermore, the hours of operation of a pre-school are limited to general business hours and



therefore do not generate noise during sleeping hours or weekends when most people will be at home. It needs to be borne in mind that the attendees of the preschool will be toddlers, not rambunctious teenagers, or even active primary school students, and consequently their outdoors activities will necessarily be strictly and adequately supervised and controlled by their caretakers. This alone seems to make folly of the notion that the facility will somehow constitute a nuisance or annoyance.

Similarly, the concerns expressed by some of the objectors about the proposed preschool increasing crime levels and/or causing devaluation of property values are irrational, illogical and without merit. Indeed, it is submitted that the availability and ease of access to basic public infrastructure, such as educational facilities, could only serve to increase property values in the area. Indeed, having a preschool within a subdivision would logically seem to provide an enhancement of the amenity of the area, in much the same way as having parkland and playground facilities would, especially to young families, who tend not to commit crimes in their own neighbourhoods. Therefore, this perceived concern is completely baseless.

Furthermore, the concerns expressed by some of the objectors relating to "commercial rezoning" of the property are simply unfounded as the subject application does not seek a re-zoning of the property to commercial, nor is it the applicant's intent to make such application, as the commercial designation would actually not serve the purposes of the proposed land use as a preschool. As the application concerns only a change-of-use from residential to educational, there is no risk that approval of our client's application could result in approval of the premises for any other future commercial use. If such use were intended in the future (which, for the avoidance of doubt, it is not) then a new application in respect of such change of use and/or application for rezoning would be required by such an applicant and, at the end of the day, such a rezone could only be granted by Parliament after employing the very time-consuming process prescribed by Part II of the Development and Planning Act.

## Conclusion

Our client's vision is to provide a small, properly managed and functional pre-school education facility for the children and parents of Grand Cayman. Having herself experienced the very perplexing lack of available early childhood educational spaces firsthand, our client is passionate about being the change that she wishes to see in Cayman. By providing the proposed preschool facility in the grossly underserved Bodden Town area, our client aims to provide not only seats, but also accessibility to such seats for the benefit of the fastest growing district of the Island. It goes without saying that educational facilities are a very important part of our basic essential

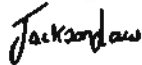
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national infrastructure, without which the Island cannot continue to grow and flourish, and without which the welfare of the people of the Islands will be significantly adversely impacted.

In light of these submissions, our client humbly requests that the proposed application be approved.

Respectfully Submitted,



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## APPENDIX 1

Estates Gazette Law Reports/1991/Volume 1 /Cranford Hall Parking Ltd v Secretary of State for the Environment and another - [1991] 1 EGLR 283

[1991] 1 EGLR 283

**Cranford Hall Parking Ltd v Secretary of State for the Environment and another**

**Queen's Bench Division**

**December 11 1987**

**(Before His Honour Judge MARDER QC, sitting as a Judge of the High Court)**

*Town and Country Planning Act 1971, sections 36 and 245 – Motion to quash inspector's decision on an appeal under section 36 against refusal of planning permission – Inspector misdirected himself – Wrong approach – Matter seen by inspector in terms of onus of proof as if he were considering perhaps a piece of civil litigation or possibly even a criminal prosecution – The fact that the proposed development is in green belt land does not in itself constitute a sound reason for refusing planning permission – Correct approach set out in Department of the Environment Circular 14/85 – Inspector's decision quashed*

*The land in question in this case consisted of about two acres off the Bath Road, near Heathrow Airport, long used for off-airport parking – There had been a series of temporary planning permissions for that use but there had then been a refusal, which gave rise to the present appeal – The land was within the metropolitan green belt – In rejecting the appeal against the planning refusal, the inspector, in paras 6 and 7 of his decision letter, gave himself directions as to the methods of approach which were criticised by the appellants as erroneous – He stated that there was a general presumption against development in green belts*

*The judge agreed with the criticisms which had been made of the inspector's approach as expressed in his decision letter – In the judge's view, the true issues which the inspector was called upon to decide could be expressed in two propositions:*

*First of all, was the use which was proposed for car parking an appropriate and acceptable use of land in this part of the green belt; or was that use such in this particular case as to cause demonstrable harm to the green belt's function and purpose?*

*Second, if the use that was proposed was inappropriate and damaging to the green belt, were there exceptional reasons, such as an overriding need for the facility, for permitting it in the face of the presumption against such inappropriate development within a green belt area?*

*The inspector appeared in his letter to see the matter in terms of onus on proof as if he were considering perhaps a piece of civil litigation or possibly even a criminal prosecution – In J A Pye (Oxford) Estates Ltd v West Oxfordshire District Council the judge had said that the term "burden of proof", as it is used in civil litigation between parties, is not appropriate in the context of planning appeals – In the present case the inspector had appeared to cast the whole burden on the appellants and had in effect refused planning permission because the appellants had failed to discharge the onus on them*

*The correct approach was set out in the Department of the Environment Circular 14/85 – This was, of course, ministerial policy guidance, but in this respect it correctly reflected the statutory position – It pointed out that the planning system fails in its function whenever it prevents, inhibits or delays development which could reasonably have been permitted*

*The principles on which the court is prepared to intervene were set out in the well-known decision of Forbes J in Seddon Properties Ltd v Secretary of State for the Environment – Notwithstanding the inspector's error of approach in the present case, Judge Marder would not necessarily have interfered with the decision if the letter had demonstrated clear reasoning and sound grounds for dismissing the appeal – Unfortunately, he found the issues discussed in a confusing manner and the reasoning obscure – It was difficult to tell from the letter why the*

*inspector decided as he did -- There was no alternative but to quash the decision*

The following cases are referred to in this judgment.

*Pye (JA) (Oxford) Estates Ltd v West Oxfordshire District Council* (1982) 47 P&CR 125; 264 EG 533, [1982] 2 EGLR 164; [1982] JPL 577

*Seddon Properties Ltd v Secretary of State for the Environment* (1978) 42 P&CR 28; 248 EG 950, [1978] 2 EGLR 148; [1978] JPL 835

This was a motion by Cranford Hall Parking Ltd under section 245 of the Town and Country Planning Act 1971 (now section 288 of the Town and Country Planning Act 1990) to quash the decision of an inspector appointed by the Secretary of State for the Environment to determine an appeal by the applicants under section 36 (now section 78 of the 1990 Act) of the Town and Country Planning Act 1971. The appeal related to an area of about two acres of land near Heathrow Airport, which had been used under temporary planning permissions for car parking until the refusal of permission which gave rise to the present litigation.

Anthony Dinkin (instructed by Reginald Johnson & Co) appeared on behalf of the applicants, Cranford Hall Parking Ltd. Guy Sankey (instructed by the Treasury Solicitor) represented the respondent Secretary of State; the second respondents, Hounslow London Borough Council, were not represented and took no part in the proceedings.

Giving judgment, JUDGE MARDER QC said: This is a motion brought under the provisions of section 245 of the Town and Country Planning Act 1971 to quash the decision of an inspector, appointed by the Secretary of State for the Environment, to determine an appeal under section 36 of the Act against the refusal of planning permission. The land in question is about two acres just off the Bath Road, close by Heathrow Airport, and an area of land long used for off-airport parking. There had been a series of temporary planning permissions for that use, but the renewal of permission had been refused, and hence the appeal to the Secretary of State from that refusal. JUDGE MARDER QC

The site, which is shown on a plan that was before me, is part of a narrow corridor of open land, which has the status of approved "metropolitan green belt", the corridor providing separation between Cranford to the east and the huge bulk of developed land comprising Heathrow Airport to the west.

As it seems to me, the true issues which the inspector was called upon to decide in the circumstances of this case could be expressed in two propositions: first of all, was the use which was proposed for car parking an appropriate and acceptable use of land in this part of the green belt, or was that use such in this particular case as to cause demonstrable harm to the green belt's function and purpose? Second, if the use that was proposed was inappropriate and damaging to the green belt, were there exceptional reasons, such as

[1991] 1 EGLR 283 at 284

overriding need for the facility, for permitting it in the face of the presumption against such inappropriate development within a green belt area?

The inspector gave his decision on the appeal by letter dated November 18 1986, and it is apparent to me beyond doubt that the appellants' complaints about that letter are well founded. Paras 6 and 7 of the letter constitute, in effect, directions which the inspector gave himself as to the method of approach to the issues in this appeal and to determining the appeal.

In para 6 he said:

It is a general principle of planning that there is a presumption in favour of development unless there are sound and clear cut reasons to the contrary. The onus of proof rests with the council. This argument was promoted in support of

-- the appellants' --

scheme.

However, the approach is different within Green Belts. Here the principle which has been laid down in successive circulars since the 1950s, and recently reaffirmed in Circular 14/84 (*Green Belts*), is that there is a general presumption against development in Green Belts. Development is only allowed in exceptional circumstances. The onus of proof is thus with the prospective developer.

In para 7, he went on:

Accordingly, from my inspection of the site and surroundings, the on-airport parking provision and other off-airport car parks, together with the consideration of all the evidence and representations, I deem that the main issue in this appeal is whether or not the need for airport parking facilities is sufficient to justify an exception to the strong presumption against development in the Green Belt.

It will be noticed from that formulation in para 7 that he does not appear to consider it to be an issue for him to determine, or at any rate, not a main issue, whether this development would bring about demonstrable harm to the green belt, and para 6, which I have just read, is clearly a misdirection, first, because the inspector appears to see the matter in terms of onus of proof as if he were considering perhaps a piece of civil litigation or possibly even a criminal prosecution.

Mr David Widdicombe QC, sitting as a deputy judge of the High Court, in the case of *Pye*, which is reported at (1982) 47 P&CR 125, the full name being *J A Pye (Oxford) Estates Ltd v West Oxfordshire District Council*, had this to say on this very question of onus of proof, at p 130:

I agree with Mr Laws

-- who was counsel for the Secretary of State in that case --

that the term "burden of proof" as it is used in civil litigation between parties is not appropriate in the context of planning appeals.

On p 131, he went on to say:

In my judgment, the task of the inspector on an appeal is to consider the facts and contentions put before him by the parties at the inquiry (including any third parties) and in the light of what he ascertains at the inquiry and his view of the site to advise the Secretary of State as to whether there are any sound and clear-cut reasons for refusal of planning permission. In doing this, there is nothing objectionable in the inspector saying in his report "I do not accept the contention" of one party or another, or "I am not satisfied that such and such a point has been made out", provided that it is clear that it is in the overall context referred to above. It would often, certainly, be helpful if inspectors made a clear finding as to whether there is or is not a sound and clear-cut objection to the grant of permission, thus showing that they have followed the Secretary of State's policy, but a decision is not invalidated because it does not use that precise language.

That is the end of the quotation from Mr Widdicombe's judgment.

I am happy to adopt every word he said on that matter and apply it to the circumstances of this case, and it follows that the inspector placing the onus of proof on the prospective developer in this instance was clearly in error.

If that were a mere matter of words, then the court would not interfere, but it is clear from the conclusions

expressed by the inspector and, in para 13 in particular, by the use of words like "the need for parking should be definite and overwhelming" and the phrase "I am not convinced that such an argument has been presented in this case", by those expressions and by para 13 in general, that this incorrect approach has coloured the inspector's assessment of the evidence. In essence, he has cast the whole of the burden on the appellants and he has, in effect, refused planning permission because the appellants have failed to discharge the onus on them or, at any rate, that is what it seems to me that the inspector has done. Second, and it may be perhaps that this is merely another way of saying the same thing, the approach of the inspector in para 6, the passage I have read, indicates also that the inspector has either failed to have regard to current ministerial guidance in Circular 14/85 or has misunderstood or misinterpreted that guidance.

The Circular 14/85 is headed *Development and employment* and was issued in July 1985 to demonstrate the Government's policy of seeking to promote enterprise and job creation. Para 3 appears to me to be quite specific. It says:

Development proposals are not always acceptable. There are other important objectives to which the Government is firmly committed, the need to preserve our heritage, to improve the quality of the environment, to protect the Green Belts and conserve good agricultural land.

It goes on:

There is therefore always a presumption in favour of allowing applications for development, having regard to all material considerations, unless that development would cause demonstrable harm to interests of acknowledged importance.

In parenthesis, I can add that "interests of acknowledged importance" clearly refers back to such policies to which the Government is committed as the protection of the green belts.

The matter was expressed, both in the appellants' motion and, indeed, by Mr Widdicombe in the decision in the case of *Pye* to which I have just referred, as one of failure to construe properly ministerial policy guidance, but I remind myself that in this instance, at any rate, that ministerial policy guidance is no more than a reflection of the statutory position or the legal position, for at the very heart of the control of development in the 1971 Act, and of course in its predecessors, there is the discretionary power to refuse permission for development of an owner's land and that power is exercisable, as a matter of law, only on good, sufficient and lawful reasons being shown for the refusal.

As I have said, the passage in the Circular 14/85, to which I have just referred, sets out a correct approach as a reflection of that statutory position and it is precisely because the correct approach is currently set out there in the circular that I ventured to formulate the real issues before this inspector in the way I did at the beginning of this judgment.

Of course there is a presumption, derived from earlier circulars that are still current, that inappropriate development will not be permitted within the green belt and there must, no doubt, frequently be cases where the fact that the proposals are inappropriate and damaging to the interests of green belt policy will be self-evident, but the circular points out, and I think correctly points out, quite clearly that the fact that it is green belt land does not in itself constitute a clear-cut and sound reason for refusing permission. The right approach, as I said earlier, is a presumption that planning permission will always be allowed, which will be overridden where it is shown that the development would cause demonstrable harm to the green belt policy. It is clear that the inspector, in the passages in paras 6 and 7 of his decision letter, has adopted a quite different and incorrect approach.

I am conscious of the restricted jurisdiction that the court exercises in matters of this kind. The principles on which the court is prepared to intervene are clearly set out in the oft-cited decision of the late Forbes J in the case of *Seddon Properties Ltd v Secretary of State for the Environment*\* and, notwithstanding the inspector's error of approach in paras 6 and 7 of his letter, I would still not necessarily have interfered with his decision if the remainder of the decision letter had indicated clear reasoning and sound reasons for dismissing the appeal, or if the decision of the appeal must inevitably be the same if a correct approach had been adopted, but I regret that I cannot say that in this case.

\* Editor's note: Reported at (1978) 248 EG 950, [1978] 2 EGLR 148

Looking in particular at the passages in paras 11 to 13 of the letter, I find the issues discussed confusing and the reasoning obscure. The appellants justly complain that they cannot tell from that letter why the planning permission has been refused. Mr Guy Sankey, on behalf of the Secretary of State, has endeavoured with considerable skill and, if I may say so, with considerable patience, to assist me on this matter, but I am bound to say without a great deal of success. I still am unable to extract precisely why the inspector decided as he did.

I do not think that detailed analysis by me of the passage in question at this stage will be of assistance since, in my judgment, the

[1991] 1 EGLR 283 at 285

whole matter requires to be looked at again.

I see no alternative but to quash the decision. The motion, therefore, succeeds and an order will be made accordingly.

*The inspector's decision was quashed with costs against the Secretary of State.*

## APPENDIX 2



## News

## Enrol Children in Licensed ECCE Centres

8 March 2023 | By: [Stacey-Ann Anderson](#)

The Ministry of Education is advising parents to only enrol their infants, toddlers and young children in registered Early Childhood Care and Education (ECCE) Centres.

Further to The Education Act 2016, all ECCE Centres must be registered by the Education Council.

There are currently eighteen early childhood care and education institutions registered with Education Council.

"Although Centres are required to be registered, the Ministry of Education and other regulatory bodies have noticed the emergence of a few unregistered Early Childhood Centres over the past few months and taken the necessary action to close these facilities," said MoE Acting Chief Officer, Mr. Joel Francis. "Notwithstanding their closure, we urge parents to only enrol their children in registered Centres as registration is the sole guarantee that an institution meets the minimum teaching, learning and safety requirements set out by the Ministry of Education," Mr. Francis added.

Acknowledging that some parents utilise the services of unregistered institutions because they are less expensive, the Acting Chief Officer encouraged parents of Caymanian children needing early childhood assistance to take advantage of available funding by applying to the Early Childhood Assistance Programme (ECAP) to supplement childcare costs.

Mr. Francis also reminded parents seeking to enrol their children in ECCE Centres to tour the institution beforehand to observe the environment to ensure that it suits their family's needs.

Detailed guidance about choosing an Early Childhood Centre is available on the Ministry of Education's website at <https://www.gov.ky/education/departments-units/early-childhood-care-and-education-unit>.

For further inquiries, please email the [ECCE Unit](#).

### Category

Education, Careers & Employment



APPENDIX 3



Ministry of Education

Department of Planning  
Government Administration Building  
133 Elgin Ave  
George Town  
Grand Cayman  
Cayman Islands

1-February-2024

This letter is written in support of any projects related to the development of Early Childhood Care and Education Centres. This support addresses the question of suitability and necessity for such development.

According to our latest statistical data from ECCE centers, there are currently 857 children on waitlists at 28 privately owned early childhood settings in Grand Cayman. Despite the possibility of parents placing their child/children on a waitlist at more than one center, this number is still significant and represents a major deficiency in the number of placements and the access available for early childhood care and education.

Additionally, based on our reported statistics, there are 1965 spaces available for early childhood children from birth to compulsory school age, while the ESO's Compendium of Statistics 2022, based on the 2021 census, shows that there is a comparative total of 3,683 children from birth to four years old. These statistics indicate that current placements can only account for just over 50% of the children potentially in need of an early childhood care and education facility.

The statistical information above together with the established positive impact early childhood care and education settings can have on the future prospects and success of children leads us to support the establishment of any such centers, based on sound educational principles, and to confirm the suitability of such development in the interest of providing opportunities for children to receive early stimulation and care.

Kind regards,

*The Early Childhood Care and Education Unit*

**Ministry of Education**

**Cayman Islands Government Administration Building**

Main: (345) 244 2417 | Email: [ecce@gov.ky](mailto:ecce@gov.ky)

Early Childhood Care and Education Unit

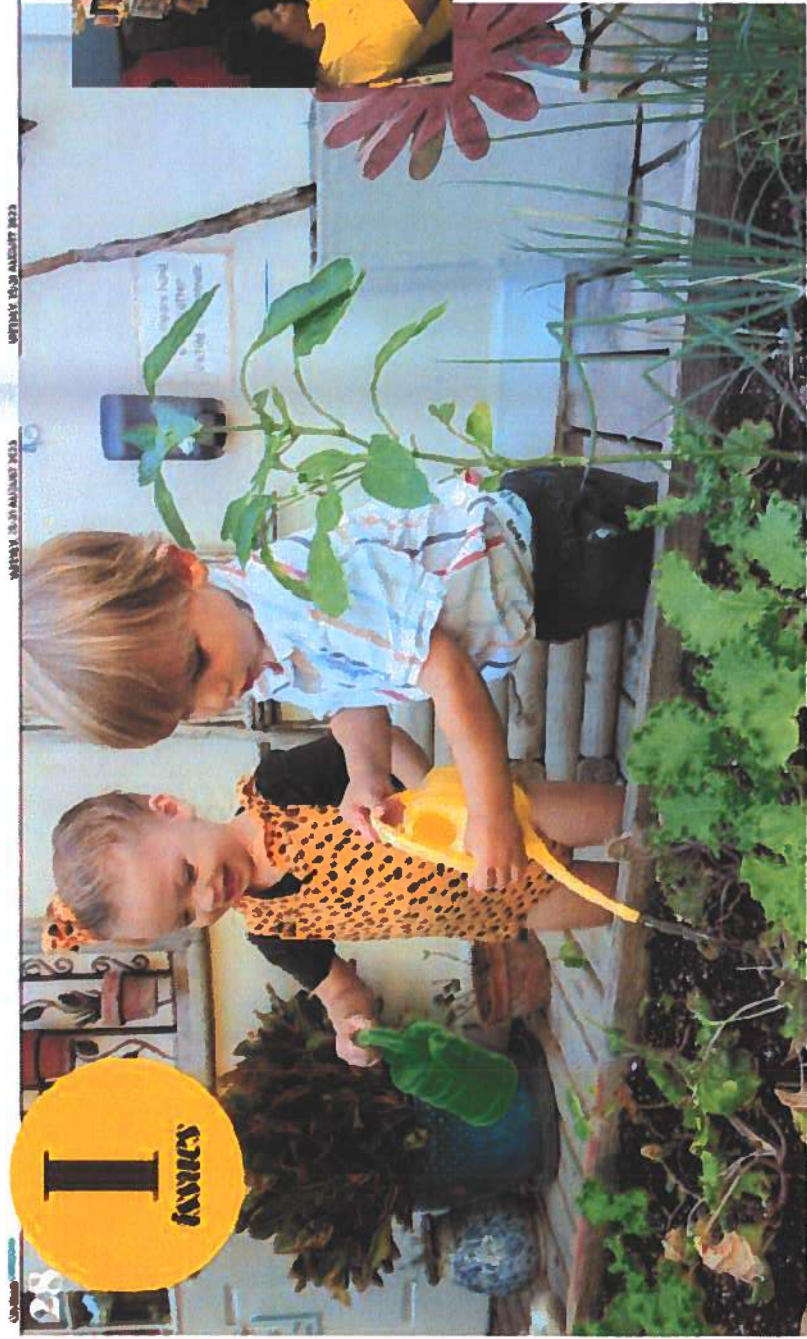
D. +1 (345) 244 2417  
E. [ecce@gov.ky](mailto:ecce@gov.ky)

P.O. Box 108  
133 Elgin Avenue  
KY1-9000

[gov.ky](http://gov.ky)

# I

## INQUIRY



Left: Thomas Stone and Isabella Edward have a busy watering day. Photo: Kate Walker

# Post-pandemic baby boom fuelling childcare space crisis

## Births rocketed by 25% since pandemic

By Sarah Lyall

The baby boom that can be seen in the United States and other countries is fuelling a childcare space crisis, according to a report by the Brookings Institution.

The report says that the number of children aged 0 to 4 in the United States rose by 25% between 2019 and 2022, the highest increase since the 1960s.

The report also says that the number of children aged 5 to 12 rose by 15% in the same period.

The report says that the increase in births is due to a combination of factors, including a decline in the use of contraception, a rise in the number of women who are working, and a rise in the number of women who are having children at an older age.

The report says that the increase in births is a challenge for childcare providers, who are struggling to find enough space to care for the growing number of children.

The report says that the government should invest in childcare infrastructure to help meet the demand for childcare.

It is a challenge for the United States, where the number of children aged 0 to 4 rose by 25% between 2019 and 2022, the highest increase since the 1960s.

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The report says that the government should invest in childcare infrastructure to help meet the demand for childcare.

There are a number of reasons why the number of children aged 0 to 4 in the United States has risen so sharply since the pandemic. One reason is that many women who were not having children before the pandemic are now having children. Another reason is that many women who were not having children before the pandemic are now having children at an older age.

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The report says that the government should invest in childcare infrastructure to help meet the demand for childcare.



This programme with Street Smart programme is helping reduce differences by early years literacy by the summer

### Opportunity costs

Childhood Academic Programme (CAP) is a programme for 5,000 children aged 3 and 4 in the United States.

The programme is designed to help children who are at risk of falling behind in school. It provides them with extra lessons and support.

The programme is run by the Department of Education and is funded by the government.

The programme has been shown to be effective in helping children who are at risk of falling behind in school. It has helped them to improve their reading and writing skills and to stay on track in school.

Why are members joining up? The programme is designed to help children who are at risk of falling behind in school. It provides them with extra lessons and support.

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### Parents left frustrated

Parents are frustrated with the government's response to the childcare crisis. They feel that the government is not doing enough to help them find childcare for their children.

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# Cayman by the numbers: Population, education and healthcare

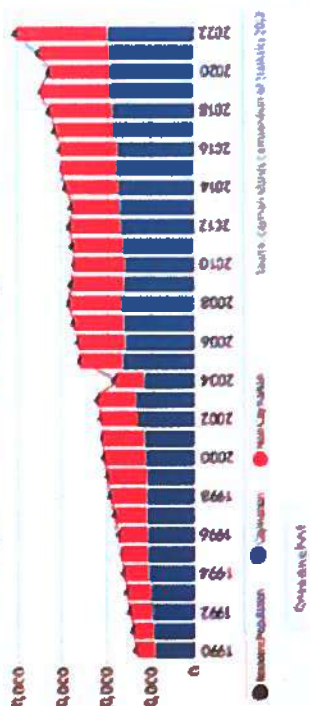
**RECORDING** the 2022 population of Cayman is 65,979, according to the 2022 Census of Population and Housing. This is a 1.5% increase from the 64,940 recorded in 2021. The population is projected to reach 70,000 by 2030.

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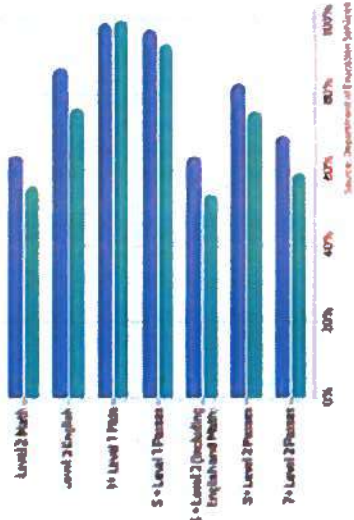
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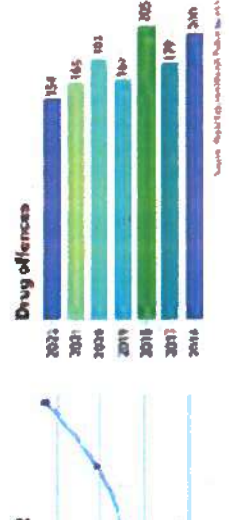
## End-of-year population estimates by status 1990-2022



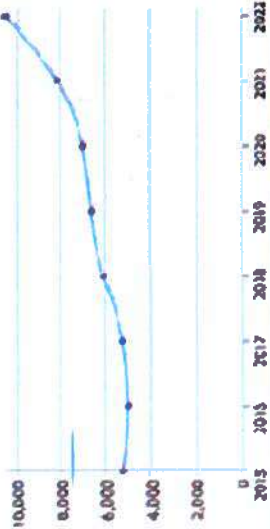
## Government high school national examination results



## Drug offences



## Number of ambulance calls 2015-2022



## Pharmaceuticals

The value of pharmaceuticals imported to Cayman increased from \$1.1 billion in 2021 to \$1.2 billion in 2022. This represents a 9% increase in value and a 10% increase in volume.

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*Extract from the 2023 Electoral Boundary Commission Report*

consideration of the above mentioned factors, the Commission decided to retain these two traditional districts as two separate constituencies despite their lower populations.

**West Bay:** West Bay currently has four constituencies. Two of these constituencies varied only slightly from the population quota (West Bay North and West Bay West) but one was considerably over-populated (West Bay South) and one was under-populated (West Bay Central). The Commission therefore adjusted the boundaries of West Bay South and West Bay Central by moving some of West Bay South's population to West Bay Central so that these two constituencies are more equal in population and the population deviations of all four West Bay constituencies are substantially less than 10 percent.

**George Town:** George Town has seven constituencies. Three were considerably under-populated (George Town North, George Town Central, and George Town West) and two were over-populated (George Town East and Prospect). The only way to increase the population in George Town North was to move south into under-populated George Town Central. As a result, George Town Central had to shift and the only directions for it to shift were south and east. Because George Town West was also under-populated, it had to pick up population by moving east as well. Thus, in order to adjust the boundaries of the seven George Town constituencies so that none deviated from the population quota by more than 10 percent, most of the constituency boundaries in this district had to shift.

\* **Bodden Town:** Bodden Town currently has four constituencies but because of the dramatic growth in this particular traditional district, its population merits five constituencies.<sup>8</sup> All four of

<sup>8</sup> The constituency allocation to traditional district based on the population quota of 1636 is reported in the table below. (The population totals for the districts do not match the population totals reported in the 2021 census report because the ESO imputed population data for missing respondents at the district level that could not be carried to the parcel-level database used for constituency delimitation purposes.)

Traditional District/Community	Qualified Population	Representation Quotient	Seat Allocation based on Population Quota	Current Number of Seats
West Bay	6717	4.11	4	4

the Bodden Town constituencies were substantially over-populated, with the most populous constituency, Bodden Town West, nearly 35% above the population quota. As noted above, the Commission considered several options, which would have the following impact on Bodden Town constituencies:

- (a) retain four considerably over-populated constituencies in Bodden Town but adjust the boundaries so that the four constituencies are more equal in population;
- (b) combine North Side and East End into a single constituency, and move the extra seat this creates to Bodden Town;
- (c) add an additional seat to Parliament, increasing the currently existing 19 to 20 MPs, and award the new constituency to Bodden Town.

The Commission decided to produce two maps for Bodden Town. One map retains four constituencies, all of them over-populated but with adjustments made to ensure that the populations across the constituencies are more equal to one another. The second map creates five constituencies in Bodden Town. The five constituencies awarded could be the consequence of a decision by Parliament either to increase the number of seats in Parliament, with an additional seat granted to Bodden Town, or to combine East End and North Side into a single constituency.

While the Commission understands that it is not practical to continue to add Members to Parliament in order to equalize population across constituencies, the Commission also recognizes that over-populated constituencies are unfair to the voters that reside in them and to the MPs that represent them.

#### 14. Renaming of Constituencies

Because some of the constituencies have been adjusted in a manner such that they no longer clearly reflect the communities they were named for (for example, the constituencies of

George Town	11239	6.87	7	7
Bodden Town	8037	4.91	5	4

8 1 YEAR

10 key promises:

Schools, landfill, housing, roads among gov't goals

THE NEW Brunswick plan outlines a number of projects and initiatives that the state wants to see completed in the next 10 years. The plan includes a number of key initiatives, including:
- Schools: The plan calls for a number of new schools and the expansion of existing ones.
- Landfill: The plan calls for the closure of several existing landfills and the construction of new ones.
- Housing: The plan calls for a number of new housing units and the expansion of existing ones.
- Roads: The plan calls for a number of new roads and the expansion of existing ones.

The plan also includes a number of other initiatives, including:
- Transportation: The plan calls for a number of new transportation projects and the expansion of existing ones.
- Environment: The plan calls for a number of new environmental projects and the expansion of existing ones.
- Economic Development: The plan calls for a number of new economic development projects and the expansion of existing ones.



1 LANDFILL: 'Nailing land' to help cover cost of project

Government is the key to getting the landfill to work, says the state's chief of staff. The plan calls for a number of new landfill projects and the expansion of existing ones. The plan also includes a number of other initiatives, including:
- Transportation: The plan calls for a number of new transportation projects and the expansion of existing ones.
- Environment: The plan calls for a number of new environmental projects and the expansion of existing ones.
- Economic Development: The plan calls for a number of new economic development projects and the expansion of existing ones.



2 EDUCATION: School expansions planned

The development of a new school in the city is a top priority for the state. The plan calls for a number of new school projects and the expansion of existing ones. The plan also includes a number of other initiatives, including:
- Transportation: The plan calls for a number of new transportation projects and the expansion of existing ones.
- Environment: The plan calls for a number of new environmental projects and the expansion of existing ones.
- Economic Development: The plan calls for a number of new economic development projects and the expansion of existing ones.



5 TRAFFIC: Intersections on which repairs planned

With several hundred projects in the state, the plan calls for a number of new highway projects and the expansion of existing ones. The plan also includes a number of other initiatives, including:
- Transportation: The plan calls for a number of new transportation projects and the expansion of existing ones.
- Environment: The plan calls for a number of new environmental projects and the expansion of existing ones.
- Economic Development: The plan calls for a number of new economic development projects and the expansion of existing ones.



6 LABOUR: Permanent Residents' system to be 'modernized'

Modernizing the permanent residents' system is a top priority for the state. The plan calls for a number of new permanent residents' projects and the expansion of existing ones. The plan also includes a number of other initiatives, including:
- Transportation: The plan calls for a number of new transportation projects and the expansion of existing ones.
- Environment: The plan calls for a number of new environmental projects and the expansion of existing ones.
- Economic Development: The plan calls for a number of new economic development projects and the expansion of existing ones.



7 ENVIRONMENT: Development plan updates not mentioned

Updates to the development plan are not mentioned in the plan. The plan calls for a number of new development projects and the expansion of existing ones. The plan also includes a number of other initiatives, including:
- Transportation: The plan calls for a number of new transportation projects and the expansion of existing ones.
- Environment: The plan calls for a number of new environmental projects and the expansion of existing ones.
- Economic Development: The plan calls for a number of new economic development projects and the expansion of existing ones.



8 ENERGY: No mention of plans for probably any new solar farms

Government announced a number of new energy projects in the plan. The plan calls for a number of new energy projects and the expansion of existing ones. The plan also includes a number of other initiatives, including:
- Transportation: The plan calls for a number of new transportation projects and the expansion of existing ones.
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- Economic Development: The plan calls for a number of new economic development projects and the expansion of existing ones.



9 BOATING: Legislation abey

Boating legislation is currently on hold. The plan calls for a number of new boating projects and the expansion of existing ones. The plan also includes a number of other initiatives, including:
- Transportation: The plan calls for a number of new transportation projects and the expansion of existing ones.
- Environment: The plan calls for a number of new environmental projects and the expansion of existing ones.
- Economic Development: The plan calls for a number of new economic development projects and the expansion of existing ones.



10 Getting off the grid

Getting off the grid is a top priority for the state. The plan calls for a number of new off-grid projects and the expansion of existing ones. The plan also includes a number of other initiatives, including:
- Transportation: The plan calls for a number of new transportation projects and the expansion of existing ones.
- Environment: The plan calls for a number of new environmental projects and the expansion of existing ones.
- Economic Development: The plan calls for a number of new economic development projects and the expansion of existing ones.

## APPENDIX 7



## News

## Nursery to Open in East End

27 June 2023 | By: [Stacey-Ann Anderson](#)

The Ministry of Education (MOE) and Department of Education Services (DES) are pleased to announce that a nursery will open at the East End Primary School at the start of the 2023/2024 academic year.

The nursery will serve Caymanian children who live in the East End and North Side Catchment areas.

To be eligible for enrollment, children must turn three by 1 September of the year in which they seek to be enrolled.

"Although we have provided tuition support through the Early Childhood Assistance Programme (ECAP) to assist parents, some working Caymanians still face challenges finding spaces and accessing quality early childhood care. With the introduction of the new early childhood facility, we aim to alleviate the burden for more parents and enable them to be more productive during the day, with the peace of mind that their children are in a safe and nurturing early learning environment," commented Minister for Education, the Hon. Juliana O'Connor-Connolly.

The nursery will operate from Monday to Friday, 8:30 am to 2:30 pm. In addition, it will offer daily morning care from 5:30 am, aftercare from 2:30 pm to 6:30 pm, and free school meals.

Learn more about the nursery [here](#).

Registration for the new early childhood facility commences on Saturday, 1 July.

DES Deputy Director Mr. Elroy Bryan stated, "There are limited spaces available, so I implore persons to register soon."

Parents may register online using the [DES Student Registration Portal](#).

Mr. Bryan also advised that parents seeking to register their children to submit an official letter from Workforce Opportunities & Residency Cayman (WORC) acknowledging the child's Right-to-be-Caymanian, and a copy of the child's immunization records, alongside the completed application form.



## News

# MoE Smart Start Programme Launched

3 February 2023 | By: [Stacey-Ann Anderson](#)

The Ministry of Education (MoE), through its Early Childhood Care & Education (ECCE) Unit, launched a 'Smart Start' Early Stimulation Programme at the Craddock Ebanks (North Side) and East End Civic Centers on Tuesday (24 January).

"In the absence of early learning facilities in the districts of Northside and East End, this programme aims to enhance toddlers' readiness for school and assist their families in creating a suitable home learning environment," remarked Acting Chief Officer Ms. Lyneth Montelth.

The 30-week programme features biweekly Smart Start sessions across both districts facilitated by a team of local early childhood professionals. The programme includes a weekly Book Buzz at the Northside and East End Public Libraries and a Stay and Play Reception session at the Edna Moyle and East End Primary Schools.

The MoE has partnered with the non-profit literacy organisation LIFE Cayman to deliver the Smart Start programme, with team members issuing books to families as part of the sessions.

Executive Director Ms. Erica Dell'Oglio remarked, "LIFE knows the importance of supporting the development of young children and those who care for them. Our current strategy primarily focuses on nurturing foundational literacy and the joy of books in the Early Years. Recognising that society is responsible for building a more compassionate world in which all our children have equal opportunities, we are proud to partner with parents, ECCE Unit and other entities in the SMART START programme.

Register for Smart Start at the North Side or East End Public Library any time during the programme or download the registration form from <https://www.gov.ky/education/departments-units/early-childhood-care-and-education-unit>, and email the completed form to [ecce@gov.ky](mailto:ecce@gov.ky).

Mrs. Shari Welcome was one of several parents whose children participated in the early sessions. She commented, "The North Side programme is off to a great start with a small group of children. The level of engagement and interaction reinforces the importance of nurturing children and empowering families to ensure children's success. I am positive this programme will continue to flourish and produce amazing



East End parent Zula Quinland added, "My son Joseph and I really enjoy the programme. More specifically, he loves meeting new children his age, reading books and participating in the singalongs. I hope it continues in the community for a long time and all parents and caregivers will take the time and effort to attend."

To learn more about the Smart Start Early Childhood Stimulation Programme, please get in touch with ECCE Officer Vanessa Cameron by telephone at 244-6625 or email at [ecce@gov.ky](mailto:ecce@gov.ky).

**Category**

Education, Careers & Employment



**Newsletter**



**Feedback**

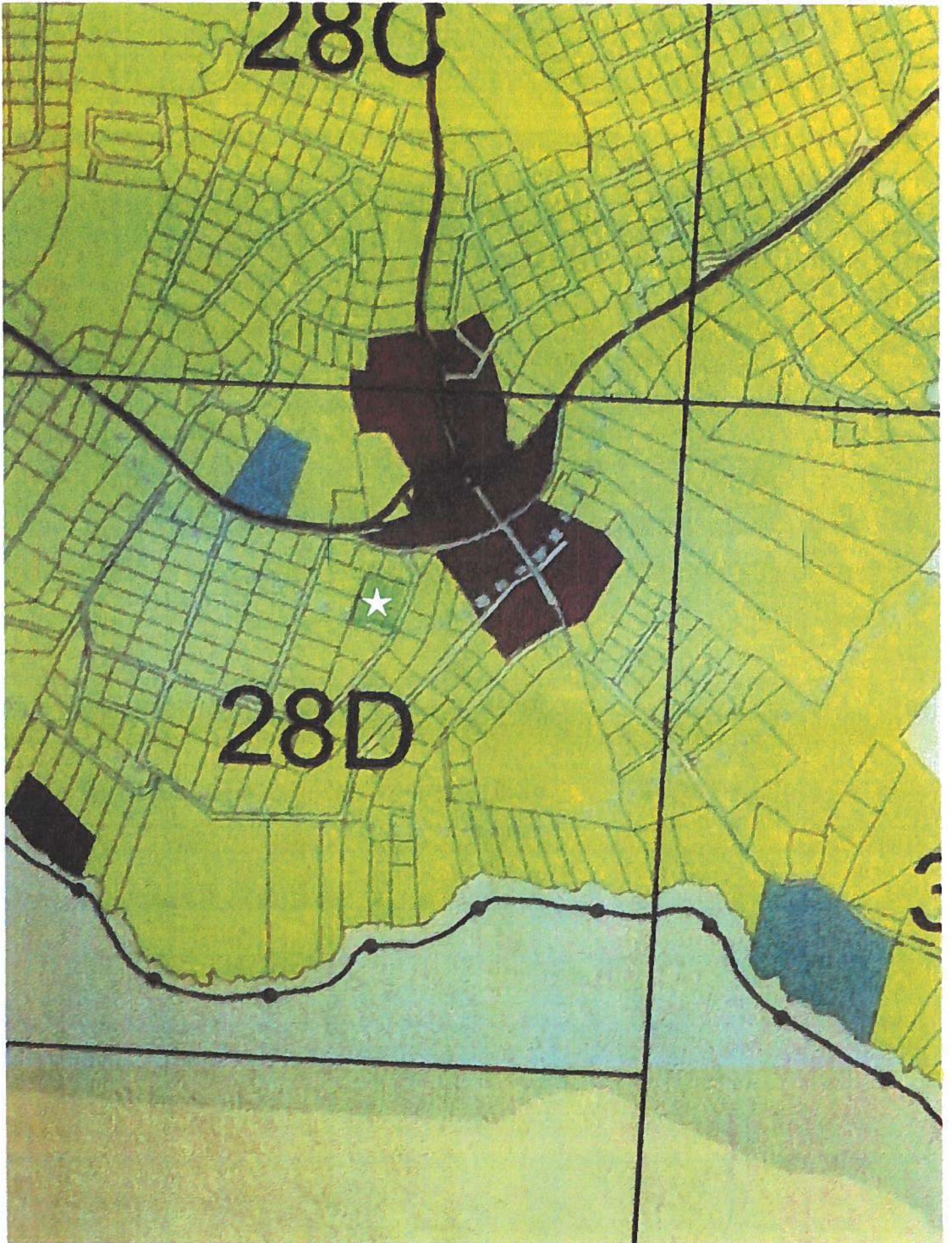


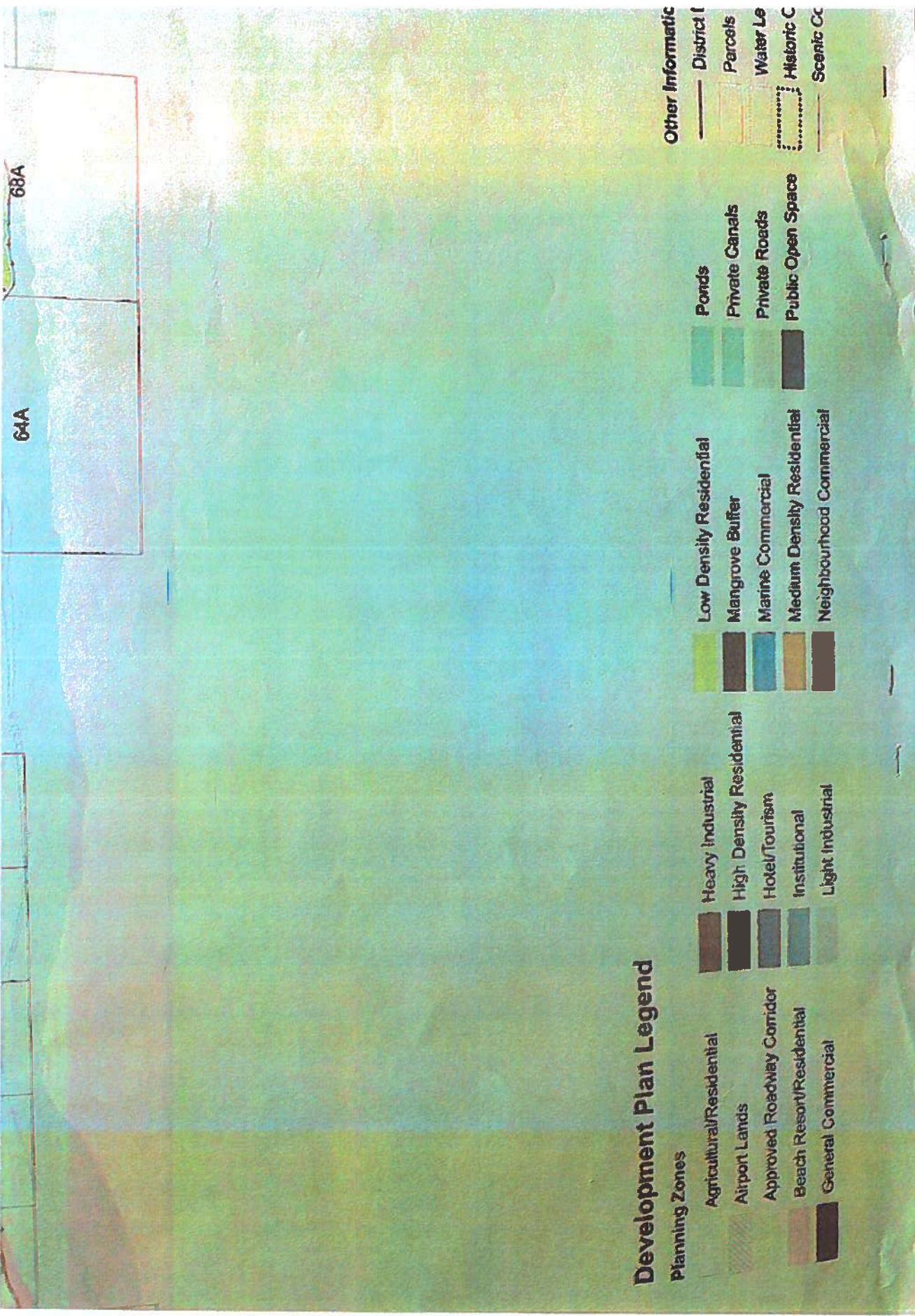
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**Cayman Islands  
Government**





### Development Plan Legend

#### Planning Zones

- Agricultural/Residential
- Airport Lands
- Approved Roadway Corridor
- Beach Resort/Residential
- General Commercial

- Heavy Industrial
- High Density Residential
- Hotel/Tourism
- Institutional
- Light Industrial

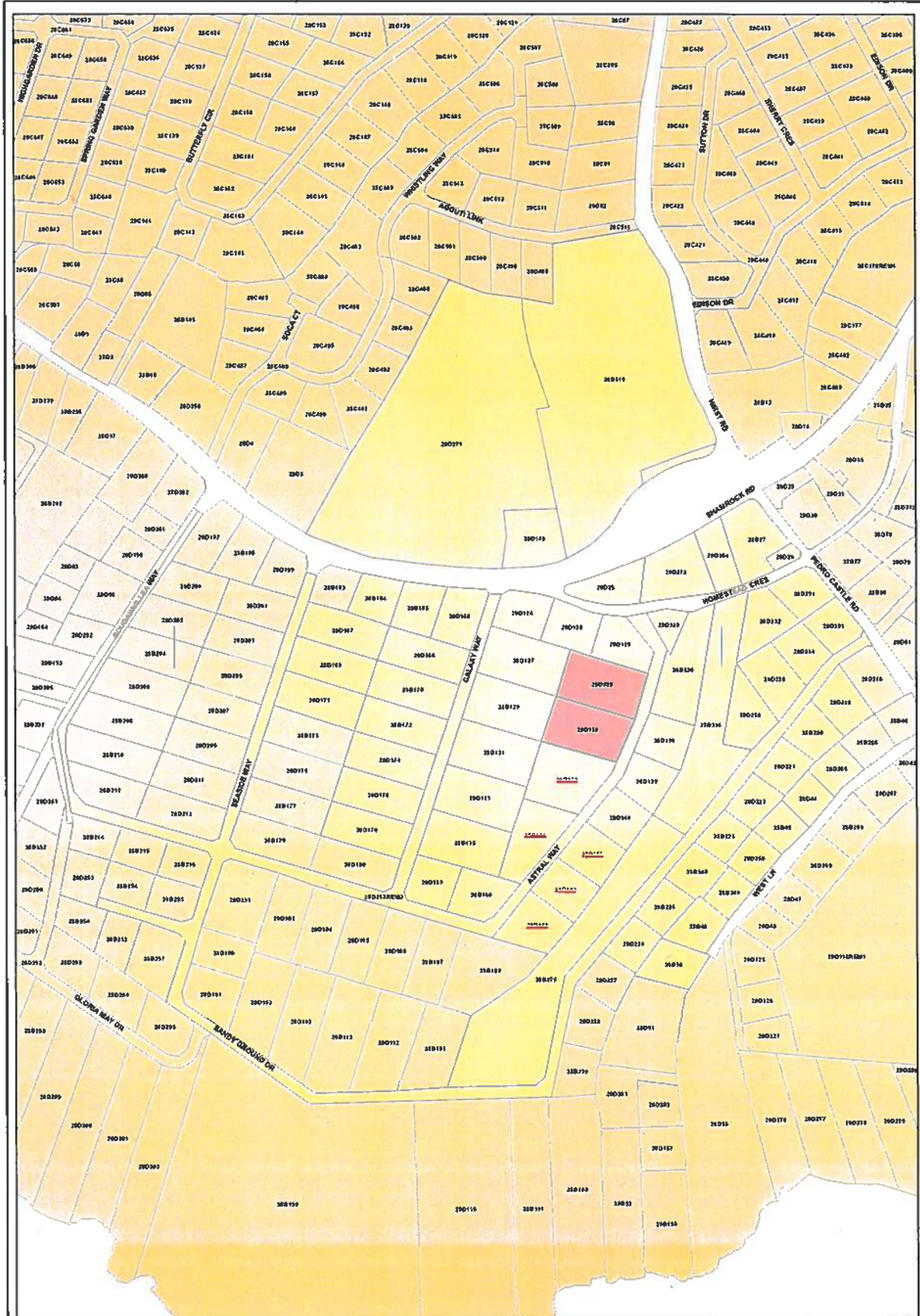
- Low Density Residential
- Mangrove Buffer
- Marine Commercial
- Medium Density Residential
- Neighbourhood Commercial

- Ponds
- Private Canals
- Private Roads
- Public Open Space

#### Other Informatic

- District I
- Parcels
- Water Le
- Historic C
- Scenic Cx

# Objector Locations



Lands & Survey Department  
 P.O. Box 1888  
 Grand Cayman, KY-11 1102  
 Cayman Islands



**CAYMAN LAND INFO**

TEL: (1-849) 244-3422  
 FAX: (1-849) 244-2187

## 28D130etc..

**Disclaimer:**  
 Containing parcels are not outlined on this map or in the list provided. Please check with the Land Registry for leasehold ownership details. - Lands & Survey Department.  
 It is advised that you are liable and responsible for notifying leasehold proprietors. If you fail to notify the lease holders, your approval being nullified and additionally have a high risk of losing any approval that may be required as part of the application.



### Legend

- Subject Parcel(s)
- Buffer Parcels
- Buffer Distance 500ft



## Appendix E

**Gwendolyn McLaughlin  
P.O. Box 645  
Grand Cayman KY1-1303  
Tel: (345) 916 8055**

November 19, 2023

Director of Planning  
PO Box 113  
Grand Cayman KY1-9000

Dear Sirs,

Notice of Application for Planning Permission by Tropical Architectural Group Ltd. on 5C 77

I am writing to lodge an objection to the above referenced application for planning permission. I reside on Block 4D 445 on Willie Farrington Drive. This objection is being made for the following reasons:

1. Previous Applications

I previously objected to another application by Mr. Jonathan Murphy for a similar development which was refused by the CPA citing the following reason: "the authority is of the view that the Applicant **failed** to demonstrate that the subject site is a suitable location for apartments per Regulation 9(8). In this regard, the authority is of the view that the Apartments are not keeping with the Character of the area in terms of mass, scale and intensity of use and this will detract from the ability of surrounding land owners from enjoying the amenity of the properties." It is my understanding that there was no appeal process followed and that the applicant has proceeded to file a new application. There have been no changes to the residential neighborhood or the new proposed application which will change the grounds on which I based my previous objections. I enclose my previous letter for your information most of which is also repeated below. I reserve the right to make further submissions, especially in light of any response that might be issued by the Applicant in relation to any Regulation question that might be posed. I would be grateful if you would place this letter before the Central Planning Authority (CPA).

2. Buffer Zone

I again wish to point out that this development is going to be located in the vicinity of a buffer zone which is an integral area as it has long served as a buffer that protects the neighborhood during hurricanes. It should be noted that during Hurricane Ivan the sea caused damage to homes in the area with this buffer intact. If this buffer is removed, it could be catastrophic for the homes

in this area when faced with another hurricane as intense as Ivan. The area is low lying and even floods easily during regular rains or when there is high tide. There is also a certain amount of wild life in the zoned area and this development will disturb their natural habitat.

### 3 Low Density Residential Area

This area currently consists of mostly one story private single residences and this development should respect the character of this area. The proposed development should not be significantly higher than those currently in this area. A development of this magnitude will cause an increase in traffic and will completely change the neighborhood increase the noise level and privacy of existing residents. The fact that the CPA refused the previous application on these grounds supports my objection. In addition, the NRA in their review of the previous application confirmed that this development will have a moderate effect on traffic. It is my understanding that the use of moderate implies that it will cause a traffic issue. I am absolutely convinced of this.

I believe that the proposed development is a direct contravention for a Low Density Residential area. It does not respect the local context of the area and if approved would be entirely out of character with the area and detrimental to all residents living on Willie Farrington Drive.

Accordingly, having lived in this neighborhood since 1979, I am respectfully asking that this application is denied.

Yours sincerely



Gwendolyn McLaughlin



**Gwendolyn McLaughlin  
P.O. Box 645  
Grand Cayman KY1-1303  
Tel: (345) 916 8055**

**March 28, 2023**

Director of Planning  
PO Box 113  
Grand Cayman KY1-9000

Dear Sirs,

**Notice of Application for Planning Permission by William Santor on 5C 77**

I am writing to lodge an objection to the above referenced application for planning permission. This objection is being made because the property is located in a low density area having a Buffer Zone and because it will alter the character of the neighborhood and have a major impact on the traffic flow. Although the current application is for a 12 unit block of apartments, the longer term plans show a much larger development. I reserve the right to make further submissions, especially in light of any response that might be issued by the Applicant in relation to any Regulation question that might be posed. I would be grateful if you would place this letter before the Central Planning Authority (CPA).

**Objection No. 1 – Buffer Zone**

This development is going to be located in the vicinity of a buffer zone which is an integral area as it has long served as a buffer that protects the neighborhood during hurricanes. It should be noted that during Hurricane Ivan the sea caused damage to homes in the area with this buffer intact. If this buffer is removed, it could be catastrophic for the homes in this area when faced with another hurricane as intense as Ivan. There is also a certain amount of wild life in the zoned area and this development will disturb their natural habitat.

**Objection No. 2 - Low Density Residential Area**

This area currently consists of one story private single residences and this development should respect the character of this area. The proposed development should not be significantly higher than those currently in this area. A development of this magnitude will cause an increase in traffic and will completely change the neighborhood increasing the noise level and privacy of existing residents.

---

Accordingly, I am respectfully asking that this application is denied or if approved that conditions be put in place to address the above concerns.

Yours sincerely



Gwendolyn McLaughlin

## Popovich, Nicholas

---

**From:** Jenny manderson <jen3612@hotmail.com>  
**Sent:** Wednesday, November 22, 2023 7:43 AM  
**To:** Popovich, Nicholas; Planning Info  
**Cc:** Ezmie Smith; Department of Planning; Pandohie, Haroon; Gwen McLaughlin; Jrmoore1067@gmail.com; Howard, Edward  
**Subject:** [EXTERNAL] Re: Notice of Planning Application 5C77

Dear Mr. Popovich,

I would be grateful for an acknowledgment of my letter of 14th November objecting to the planning application referenced above, and to confirmation that it will be forwarded to the CPA for consideration.

I confirm that as of yesterday there was no notice of this application in my postal mail or otherwise.

Kind regards,

Jenny Manderson

On Nov 14, 2023, at 1:14 PM, Jenny manderson <jen3612@hotmail.com> wrote:

Dear Sirs,

I wish to register my objection to the above project on the basis of my earlier objection. The project was refused on 16th August, 2023 by the CPA. I was informed that the refusal was on the grounds that it was not in keeping with the character of the surrounding area. No mention was made of the flooding concerns, or of the concerns expressed by the objectors and the NRA about traffic.

The application is again on the CPA agenda and I have NOT yet been notified and given an opportunity to object.

I must object to the current application since I was not informed of any substantial changes to the earlier plan. I do not object to a residential project in this area but I objected and continue to object to the original application and to any other plan that will create a threat to my home and my neighborhood. The loss of the protective mangrove and wetlands constitutes a danger from rain and storm floods. The number of rooms with over 200 car parking spaces presents an unimaginable traffic hazard on the neighborhood road. The issue of the length of the roadside boundary is also a concern.

Please refer my objection to the CPA.

Kind regards,

Jenny Manderson

On Nov 14, 2023, at 10:36 AM, Popovich, Nicholas <Nicholas.Popovich@gov.ky> wrote:

Good morning,

Thank you for the emails pertaining to our application number P23-0940.

I have reviewed the notification documents provided by the applicant.

The applicant has provided the notice forms and proof of postage for all landowners located within 450 feet of the subject property boundaries.

I would suggest that affected landowners review the subject plans on our website ([www.planning.ky](http://www.planning.ky)) under the "planning notices" portal.

Please look for P23-0940 within that portal to view the plans.

If a landowner has yet to receive the notice in the mail, I would suggest that they contact the CI Post Office staff.

I hope that helps.

Please contact me if you have any questions.

Nick

**Nick Popovich M.PL, MCIP, RPP, AICP**  
Planning Officer | Current Planning



**DEPARTMENT OF PLANNING**  
Cayman Islands Government

**Government Administration Building**

**133 Elgin Avenue | George Town**

**P.O. Box 113 | Grand Cayman KY1-9000 | CAYMAN ISLANDS**

**+1 345 244-6501 (Main) | +1 345 244-6538 (Direct)**

**✉ [nicholas.popovich@gov.ky](mailto:nicholas.popovich@gov.ky) | [www.planning.gov.ky](http://www.planning.gov.ky)**

This email, including any attachment, is strictly confidential and may also be subject to legal professional and other privilege. No confidentiality or privilege is waived by any error in its transmission. It is intended solely for the attention and use of the named addressee(s). If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are not authorized to and must not review, disclose, copy, distribute or retain this message or any part of it. If you have received this email in error, please delete it from your system and notify the sender immediately at the above email address or call 1-345-244-6548.

**From:** Ezmie Smith <[smithezmie@gmail.com](mailto:smithezmie@gmail.com)>

**Sent:** Sunday, November 12, 2023 12:24 PM

**To:** Department of Planning <[Planning.Dept@gov.ky](mailto:Planning.Dept@gov.ky)>; Pandohie, Haroon <[Haroon.Pandohie@gov.ky](mailto:Haroon.Pandohie@gov.ky)>; Popovich, Nicholas <[Nicholas.Popovich@gov.ky](mailto:Nicholas.Popovich@gov.ky)>

**Cc:** 'Jenny manderson' <[jen3612@hotmail.com](mailto:jen3612@hotmail.com)>; 'Gwen McLaughlin' <[GMcLaughlin@tridenttrust.com](mailto:GMcLaughlin@tridenttrust.com)>; [Jrmoore1067@gmail.com](mailto:Jrmoore1067@gmail.com)

**Subject:** [EXTERNAL] RE: Re: Notice of Planning Application 5C77

Sirs

Sorry in error typed 5C113 which should "read 5C13". Apologies.

---

**From:** Ezmie Smith [<mailto:smithezmie@gmail.com>]  
**Sent:** Sunday, November 12, 2023 11:43 AM  
**To:** 'Department of Planning' <[Planning.Dept@gov.ky](mailto:Planning.Dept@gov.ky)>; 'Pandohie, Haroon' <[Haroon.Pandohie@gov.ky](mailto:Haroon.Pandohie@gov.ky)>; 'Popovich, Nicholas' <[Nicholas.Popovich@gov.ky](mailto:Nicholas.Popovich@gov.ky)>  
**Cc:** 'Jenny manderson' <[jen3612@hotmail.com](mailto:jen3612@hotmail.com)>; 'Gwen McLaughlin' <[GMcLaughlin@tridenttrust.com](mailto:GMcLaughlin@tridenttrust.com)>; 'Jrmoore1067@gmail.com' <[Jrmoore1067@gmail.com](mailto:Jrmoore1067@gmail.com)>  
**Subject:** Re: Notice of Planning Application 5C77

Dear Sirs,

In respect of the above subject matter kindly see the attachment.

The Notice of application for Planning Permission is only sent to me in respect of 5C113 instead of all the registered owners as listed on the land register. The other owners of the property has been excluded and for what reason. It does not work like this as all registered owners must be served. The previous notices in this matter included all the property owners. This is being brought to your attention to ensure that all registered land owners are properly served.

In addition to the above - the two other previous objectors who still fall within the radius of the above subject matter has not yet received notice of this **proposed new application**. Also others in the same tedious are still waiting to receive the required notice of the application. . On the Planning application site it states the date line for this matter expires within the next 12 days being 24.11.23.

This email is being sent to ensure that the procedure for the planning notification is carried out as laid out in the Statute.

I wait for a response as to why the Applicant has ignored the proper requirement.

Regards.

Ezmie Smith



## Popovich, Nicholas

---

**From:** James Moore <jrmoore1067@gmail.com>  
**Sent:** Tuesday, November 14, 2023 2:37 PM  
**To:** Ezmie Smith  
**Cc:** Department of Planning; Pandohie, Haroon; Popovich, Nicholas; Jenny manderson; Gwen McLaughlin  
**Subject:** [EXTERNAL] Re: Re: Notice of Planning Application 5C77

Hello,

I would like to express my disappointment that this issue is once again being discussed and that the impacted homes and neighbors have not received any official notices or information. I have not yet received notification or been given the chance to object, even though the application is once again on the CPA agenda.

When hurricane Ivan hit, the entire region was submerged under six feet of salt water. If a storm of that size ever occurs again and all of the mangrove and other vegetation is completely gone, it will only make the situation in the neighborhood worse than it was during Ivan.

It is also conceivable to clear the land here without planning permission, and I wish to strongly protest it. This is incorrect in a lot of ways.

I also want to protest the 1500 feet required by law to notify vestes parties; it is unfortunate to attempt to break the laws.

I have checked out mailing this past weekend and no mailing from the planning dept concerning this application there.

Sincerely  
James Moore

On Sun, Nov 12, 2023 at 12:24 PM Ezmie Smith <[smithezmie@gmail.com](mailto:smithezmie@gmail.com)> wrote:

Sirs

Sorry in error typed 5C113 which should "read 5C13". Apologies.

---

**From:** Ezmie Smith [mailto:[smithezmie@gmail.com](mailto:smithezmie@gmail.com)]  
**Sent:** Sunday, November 12, 2023 11:43 AM

To: 'Department of Planning' <[Planning.Dept@gov.ky](mailto:Planning.Dept@gov.ky)>; 'Pandohie, Haroon' <[Haroon.Pandohie@gov.ky](mailto:Haroon.Pandohie@gov.ky)>; 'Popovich, Nicholas' <[Nicholas.Popovich@gov.ky](mailto:Nicholas.Popovich@gov.ky)>  
Cc: 'Jenny manderson' <[jen3612@hotmail.com](mailto:jen3612@hotmail.com)>; 'Gwen McLaughlin' <[GMcLaughlin@tridenttrust.com](mailto:GMcLaughlin@tridenttrust.com)>;  
'Jrmoore1067@gmail.com' <[Jrmoore1067@gmail.com](mailto:Jrmoore1067@gmail.com)>  
Subject: Re: Notice of Planning Application 5C77

Dear Sirs,

In respect of the above subject matter kindly see the attachment.

The Notice of application for Planning Permission is only sent to me in respect of 5C113 instead of all the registered owners as listed on the land register. The other owners of the property has been excluded and for what reason. It does not work like this as all registered owners must be served. The previous notices in this matter included all the property owners. This is being brought to your attention to ensure that all registered land owners are properly served.

In addition to the above - the two other previous objectors who still fall within the radius of the above subject matter has not yet received notice of this **proposed new application**. Also others in the same tedious are still waiting to receive the required notice of the application. . On the Planning application site it states the date line for this matter expires within the next 12 days being 24.11.23.

This email is being sent to ensure that the procedure for the planning notification is carried out as laid out in the Statute.

I wait for a response as to why the Applicant has ignored the proper requirement.

Regards.

Ezmie Smith



PO Box

Grand Cayman KY1-

14<sup>th</sup> November, 2023

Director of Planning

PO Box 113

Grand Cayman KY1-9000

Dear Sirs,

Re: Notice of Application for Planning Permission by 20 North Development Company on 5C 77 dated 2<sup>nd</sup> November 2023

This objection is made to the above mentioned Application in relation to a Low Density area having a Buffer Mangrove Zone to ensure that it is not destroyed during the development since such huge developments continue to grow larger in the Cayman Islands. We reserve the right to make further submissions, especially in light of any response that might be issued by the Applicant in relation to any Regulation question that might be posed. We would be grateful if you would place this letter before the Central Planning Authority (CPA).

The Mangroves:

Where the development is going to be located is in the vicinity of a Mangrove Area of an integral area. The buffer of mangroves has long served for protection during hurricanes. It has protected erosion in this area and property value.

1. The buffer area is very wet and swampy as it never seems to keep dry. This is important to note and important to surface water runoff. The site plan accounts for a drainage catchment and a deep well unlikely to be insufficient. The Notice of Application for planning permission is for proposed apartments (building 1-12) etc. whereas the site plan information shows up to 12 Building areas, a lot of construction digging would take place for a saturated area to be disturbed. We ask the Central Planning Authority (CPA) to consider this proposed development is an established residential area on Willie Farrington Drive and zoned Low Density.
2. This application also needs to be looked at in the nature of conservation of the kept flooded mangroves. The proposed development falls close by and would be a harmful precedent if approved for such a low lying area. This is important for the CPA to be minded of as this buffer area offers to the privacy to the neighbours as well. Section 26 of the Development and Planning Act sets out the Mangrove Buffer on the Development - shall not be subject of development or clearance other than by the person authorized in that behalf by the authority and to the extent and in the manner, if any, directed by them. There should be no directions to destroy such a protective area taking into consideration hurricanes. Hurricane Ivan certainly proved this.

3. It is a well known area that is within a flooded risk area, the proposed drainage as far as one would say is insufficient from the site plan to satisfy us.
4. The applicant needs to make clear that the Mangroves must be retained and should be identified on the site plan.
5. There is a certain amount of wild life in the zoned area that would be destroyed if such an application is approved.

#### Low Density Area - Willie Farrington Drive:

1. The development should respect the surrounding character area. The area on the proposed east side of Willie Farrington Drive is dominated by low density single storey houses. This development would be less uniform.
2. The proposed development should not be significantly higher than those found on this particular east side of Willie Farrington Drive as the homes are all single storey buildings in keeping with that side of Willie Farrington Drive as this is an established residential area.
3. The development could have a damaging effect in changing the neighbourhood particularly to that side of Willie Farrington Drive due to the current lay out. If this application is approved in a low density area definitely there will be concerns about possible future development.
4. It is also noted that the road side to the east of Willie Farrington Drive of the proposed development the density of the proposed new development is out of keeping with its surroundings and loss of amenity for neighboring houses. The NRA in their review of the previous application confirmed that this development will have a moderate effect on traffic

#### Previous Application versus current new application:

The previous application by the Applicant was refused by the Authority on the basis that the Applicant failed to demonstrate that the subject site is NOT a suitable location for apartments per Regulation 9(8). In this regard, the authority is of the view that the Apartments are not keeping with the Character of the area in terms of mass, scale and intensity of use and this will detract from the ability of surrounding land owners from enjoying the amenity of the properties."

It has only been less than 3 months since that decision was made and certainly the layout of the land and the neighbourhood has certainly not changed in such a short while.

The only change to the application is that the units are reduced to 95 units which is a small one for still a large development in a low density zone.

#### Notice of Application for Planning Permission

We are now in receipt of being served with notice of the proposed application. This application should be denied on the failure of effecting proper service also according to Section 40 of the current Development and Planning Act.

**We submit the foregoing reasons as outlined as to why the application should be denied again.**

**Yours respectfully**

**James Moore**

**Rebecca Moore**

**Rannielee Hyde**

|

|



PO Box 287

Grand Cayman KY1-1301

12<sup>th</sup> November 2023

Director of Planning

P.O. Box 113,

Grand Cayman KY1-9000

Cayman Islands

Dear Sir,

Re: Objection Letter to new Notice of Application for Planning Permission on 5C77 from Tropical Architectural Group Ltd dated 02, November 2023

This 3<sup>rd</sup> new application is now for the purpose of "proposed apartments (Building 1-12);proposed clubhouse, gym and 4 cabanas; proposed swimming pool & deck;30 sq. ft development sign attached to a free-standing wall; (2)signs attached to the building less than 30 sq. ft." for an entity on 5C77. We are writing once again to object to the application on the following additional grounds:

Previous Application(s)

The application was refused by the Central Planning Authority on the 16th August 2023 as per the CPA minutes of that date at 2.5. "Decision: It was resolved to refuse planning permission for the following reasons: 1) "the authority is of the view that the Applicant failed to demonstrate that the subject site is a suitable location for apartments per Regulation 9(8). In this regard, the authority is of the view that the Apartments are not keeping with the Character of the area in terms of mass, scale and intensity of use and this will detract from the ability of surrounding land owners from enjoying the amenity of the properties."

It has only been less than 3 months since this decision was made and certainly the nature of the ground, layout of the land and the neighbourhood has certainly not changed in such a short while.

The Applicant in this new application has not taken the steps laid down in The Development and Planning Act (2021 Revision) according to Section 48 of the Act. The Applicant has not exhausted his rights under the Statute. What has happened here the Applicant has by passed the Statute and gone to a fresh application. The Applicant cannot jump over what is laid down in the Statute. Section 48 (i) states:

"where any person who has applied for Planning Permission, or who has objected after being notified of the application in accordance with regulations under this Act, and who is aggrieved by a decision of the Authority in respect of the Application, may within 14 days of notification of that decision under Section

40, or within such longer period as the Tribunal may in any particular case allow good cause, appeal that decision to the Tribunal on the ground that it is –

- a) erroneous in law
- b) unreasonable
- c) Contrary to the principles of natural justice.”

This is a huge failure on the part of the Applicant and the Courts does not take lightly of an applicant who has failed to exhaust any rights laid down in a Statute and is the same laid down for all quasi bodies. It is outside the scope of the Central Planning Authority to entertain a new application on its final decision where no appeal has been made to the Planning Appeal Tribunal. The Authority now lacks the locus standi for hearing any new application.

New application dated 02 November 2023:

This new application is made under the same sections as the 2 previous applications. It appears that there is the lack of any substantial change. (By reducing the units to 95. NB the plan on the planning application site is not that legible). In order for an application to be considered to be a new application, it must be substantially different from the original application. The Courts will not take kindly to subtle inventions to circumvent the purpose of the law.

**New Application sections:**

The Development and Planning Act Section 15(4), The Development and Planning Regulations, Regulation 8(12A), 8(12B), 8(12C) and 8 (13) (d) gives rise to additional concerns:

**Section 15(4) Development and Planning Act:**

- i) Not all parties for 5C13 served as there are other registered owners and not mentioned on the notice of application. So far, a number of owners have to date complained to the planning that they have not received the formal notice of application.
- ii) The Development and Planning Regulations:

**Regulation 8 (12A):**The new application notice dated 2<sup>nd</sup> November 2023 proposes apartments (Buildings 1-12) and fails to give account of the number change of units. (Appears to be trying a way through the back door.) This regulation relates to eleven or more apartments or town houses at a radius of four hundred and fifty feet. The size of 5C77 is 6.34 acre according to the land register owned by 20 North Development Co. Ltd. **{1-12 building is still a lot for a low density residential area yet the amount of new units reduced for current application and no reduction to the amount of buildings}**.

**Regulation 8 (12B):** This regulation relates to minor matters of development to be varied by the Authority such that adjoining owners are required to be notified. Not all owners are notified as of yet. Certainly this development is not of a minor matter from the objections heard on the 16<sup>th</sup> August 2023 based on the 2 previous notices whereby the application was denied.

Regulation 8 (12C): This requirement also mentions where a good cause exists. There is no justification for this with the size of the development and the number of buildings and parking required therefore it is no further justification for a 21 M\$ project. This regulation gives the right to an adjacent owner of legal capacity to lodge an objection stating the grounds. Therefore service on land owners is of importance not to be excluded.

Regulation 8 (13) (d): (if there is such a regulation). The authority must ensure compliance of the Statute of its refusal to grant an application if the applicant does not avail him or herself to adhere to the due process as to what is laid down. Therefore, this application should not be reheard.

We are not sure as to the position of the authority on this new application but still also maintain the objections below as there is really no significant change in the new application if the Authority is of the mind to discard Section 48 of the Act which should not be the case as per the Statute.

#### Low Density Residential

The reason why this application should be denied is that it is out of line of the character of the neighborhood which is exclusively single storey family homes. In a residential area the applicant shall ensure that the massing, scale, proportion and design of such development are consistent with the historic architectural tradition of the Islands. (Regulation 9 (1)). This new application simply remains a huge development into a small area that is zoned low density residential. On Willie Farrington Drive itself (not to be confused where the bypass comes out on John Jefferson Snr. Drive) there is no such buildings as those proposed by the Applicant. If a serious count was taken from the north to the south of Willie Farrington Drive (see attached Registry Map Extract) that is from the junction to Batabano and Mount Pleasant then to Fosters Republic junction it would prove that there is less than 40 residential homes. A view of the Aerial photography will definitely prove that this area is a very small community. This is all due to the layout of the land therefore it is for the Authority (CPA) in determining whether the applicant has satisfied the requirement of sub regulation 9 (1) to the compatibility of the buildings proposed with the land form. (Regulation 9 (2) (a)).

It is only recently in over more than 30 years only 4 new single storey homes has been built on Willie Farrington Drive that is because of the layout of the land. The few lots that remain vacant are family owned. This speaks for itself why the area is zoned as low density residential.

#### Harm to the Area

With the surrounding low density developed area this particular large development will take from the neighbours the enjoyment of the tranquility of the area where residents have long enjoyed. This could have a negative impact of the value of properties in the area. Now to have some development of that magnitude spoil such a nice area that is home to us is a disgrace for such a peaceful area.

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Studies have proven that when a development of this size in a low-density residential area how the affects can be in respect of new buildings units whereby rents can decrease. This new development due to the large scale will change the face of the neighbourhood and more.

Willie Farrington Drive development as it stands is of a low density subject to the area requirement in law and should not be superseded by the development. The developer should be told that the development proceed in manner consistent with surrounding properties in order to permit the development. If this development is allowed it will only cause an impact of a high density residential when this area is zoned Low Density Residential and is clearly incompatible with the character of a low-density residential area. This could be a serious breach of the law.

In the circumstances we urge the CPA **not to approve** the project to such an unreasonable development by the 3<sup>rd</sup> new application having failed to comply with Section 48 of the Statute appeal process. There must be compatibility of any building with the land form.

It would be in the interest of the developer to sell off the land as individual plots to build single storey buildings for sale. This too could cause serious problems as this Mangrove land would be under threat of destruction and flooding to adjoining owners homes.

#### Mangrove Buffer Zone

The proposed development location will result in loss of mangroves and their ecological function. It should be noted that the Ramsar Convention has been extended to the Cayman Islands to keep our mangroves alive according to the Convention. In considering any matter relating to a Mangrove Zone the CPA shall have regard to the ecological function by the mangroves (Regulation 18(1)).

Planned area developments in all areas are permissible of the island and in all zones, except Industrial, Public Open Space AND MANGROVE BUFFER. (Regulation 24(3)).

#### Type of Land on which the proposed buildings will sit.

The development site consists of tidally flooded area that is considered primary habit tat which is likely would need to be filled in to build up the site. This could result in higher ground for water runoff to affect surrounding residential properties causing flooding to their homes. This would be critical to those homes. It must be ensured that the surrounding properties nearby is not subject to flooding.

#### Traffic

Traffic from the development of the apartments will lead to the main Willie Farrington Road from the development and certainly owners from the apartment units would rather use Willie Farrington Drive to get on the bypass rather than the south intersection opposite the Fosters Republic since it is closer by to the proposed voluminous apartments units. The proposed developer has not made any mention of another way to enter and exit from the now proposed application on to the bypass which will increase traffic on Willie Farrington Drive. However, the traffic impact in such a low residential density will affect



the residents greatly and has to be considered as a serious objection as the purposed development is not a small one.

Loss of Air and Light

The development as to air and light will be an impact to the closest surrounding properties as the project will be detrimental. These surrounding properties are occupied by single store-homes. The development should be consistent with historical architectural and traditions of the islands. (Regulation 9 (1)).

Noise

Noise could be a contributing factor from such a large development creating a nuisance such as audible noise. There are 4 cabanas for the proposed development.

Conclusion:

It is believed that the proposed development is a direct contravention for a Low Density Residential area. This development does not respect the local context of the area in particular the scale of the development and height of the buildings and would be entirely out of character of the area and detrimental of the whole of Willie Farrington Drive itself.

For the reasons outlined in the foregoing objections this application should be denied in its entirety again. Indeed now it is a clearer that a decision has been made, the Planning Department and the CPA (Central Planning Authority) is functus officio that is it has performed its function and the only thing left is to appeal it or seek a judicial review, which we think is likely to failure to exhaust Statutory remedies.

For the reasons outlined in the foregoing objections this application should be denied in its entirety again.

Yours respectfully

Ezmie Smith in her own right (joint owner)

Ezmie Smith for Nicole Hydes and Elijah Samson(all joint owners)

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## **Popovich, Nicholas**

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**From:** Jenny manderson <jen3612@hotmail.com>  
**Sent:** Tuesday, November 14, 2023 1:14 PM  
**To:** Popovich, Nicholas  
**Cc:** Ezmie Smith; Department of Planning; Pandohie, Haroon; Gwen McLaughlin; Jrmoore1067@gmail.com; Howard, Edward  
**Subject:** [EXTERNAL] Re: Notice of Planning Application 5C77  
**Attachments:** image001.png.html; image001.png.html

Dear Sirs,

I wish to register my objection to the above project on the basis of my earlier objection.

**The project was refused on 16th August, 2023 by the CPA. I was informed that the refusal was on the grounds that it was not in keeping with the character of the surrounding area. No mention was made of the flooding concerns, or of the concerns expressed by the objectors and the NRA about traffic.**

**The application is again on the CPA agenda and I have NOT yet been notified and given an opportunity to object.**

**I must object to the current application since I was not informed of any substantial changes to the earlier plan. I do not object to a residential project in this area but I objected and continue to object to the original application and to any other plan that will create a threat to my home and my neighborhood. The loss of the protective mangrove and wetlands constitutes a danger from rain and storm floods. The number of rooms with over 200 car parking spaces presents an unimaginable traffic hazard on the neighborhood road. The issue of the length of the roadside boundary is also a concern.**

**Please refer my objection to the CPA.**

Kind regards,

Jenny Manderson

On Nov 14, 2023, at 10:36 AM, Popovich, Nicholas <Nicholas.Popovich@gov.ky> wrote:

Good morning,

Thank you for the emails pertaining to our application number P23-0940.

I have reviewed the notification documents provided by the applicant.

The applicant has provided the notice forms and proof of postage for all landowners located within 450 feet of the subject property boundaries.

I would suggest that affected landowners review the subject plans on our website ([www.planning.ky](http://www.planning.ky)) under the "planning notices" portal.

Please look for P23-0940 within that portal to view the plans.

If a landowner has yet to receive the notice in the mail, I would suggest that they contact the CI Post Office staff.

I hope that helps.

Please contact me if you have any questions.

Nick

## Nick Popovich M.PL, MCIP, RPP, AICP

Planning Officer | Current Planning



Government Administration Building

188 Elgin Avenue | George Town

P.O. Box 118 | Grand Cayman KY1-9000 | CAYMAN ISLANDS

☎ +1 345 244-6501 (Main) | ☎ +1 345 244-6538 (Direct)

✉ [nicholas.popovich@gov.ky](mailto:nicholas.popovich@gov.ky) | [www.planning.gov.ky](http://www.planning.gov.ky)

This email, including any attachment, is strictly confidential and may also be subject to legal professional and other privilege. No confidentiality or privilege is waived by any error in its transmission. It is intended solely for the attention and use of the named addressee(s). If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are not authorized to and must not review, disclose, copy, distribute or retain this message or any part of it. If you have received this email in error, please delete it from your system and notify the sender immediately at the above email address or call 1-345-244-6548.

---

**From:** Ezmie Smith <[smithezmie@gmail.com](mailto:smithezmie@gmail.com)>

**Sent:** Sunday, November 12, 2023 12:24 PM

**To:** Department of Planning <[Planning.Dept@gov.ky](mailto:Planning.Dept@gov.ky)>; Pandohie, Haroon <[Haroon.Pandohie@gov.ky](mailto:Haroon.Pandohie@gov.ky)>; Popovich, Nicholas <[Nicholas.Popovich@gov.ky](mailto:Nicholas.Popovich@gov.ky)>

**Cc:** 'Jenny manderson' <[jen3612@hotmail.com](mailto:jen3612@hotmail.com)>; 'Gwen McLaughlin' <[GMcLaughlin@tridenttrust.com](mailto:GMcLaughlin@tridenttrust.com)>; Jrmoore1067@gmail.com

**Subject:** [EXTERNAL] RE: Re: Notice of Planning Application 5C77

Sirs

Sorry in error typed 5C113 which should "read 5C13". Apologies.

---

**From:** Ezmie Smith [<mailto:smithezmie@gmail.com>]

**Sent:** Sunday, November 12, 2023 11:43 AM

**To:** 'Department of Planning' <[Planning.Dept@gov.ky](mailto:Planning.Dept@gov.ky)>; 'Pandohie, Haroon' <[Haroon.Pandohie@gov.ky](mailto:Haroon.Pandohie@gov.ky)>; 'Popovich, Nicholas' <[Nicholas.Popovich@gov.ky](mailto:Nicholas.Popovich@gov.ky)>

**Cc:** 'Jenny manderson' <[jen3612@hotmail.com](mailto:jen3612@hotmail.com)>; 'Gwen McLaughlin' <[GMcLaughlin@tridenttrust.com](mailto:GMcLaughlin@tridenttrust.com)>; 'Jrmoore1067@gmail.com' <[Jrmoore1067@gmail.com](mailto:Jrmoore1067@gmail.com)>

**Subject:** Re: Notice of Planning Application 5C77

Dear Sirs,

In respect of the above subject matter kindly see the attachment.

The Notice of application for Planning Permission is only sent to me in respect of 5C113 instead of all the registered owners as listed on the land register. The other owners of the property has been excluded and for what reason. It does not work like this as all registered owners must be served. The previous notices in this matter included all the property owners. This is being brought to your attention to ensure that all registered land owners are properly served.

In addition to the above - the two other previous objectors who still fall within the radius of the above subject matter has not yet received notice of this **proposed new application**. Also others in the same

tedious are still waiting to receive the required notice of the application. . On the Planning application site it states the date line for this matter expires within the next 12 days being 24.11.23.

This email is being sent to ensure that the procedure for the planning notification is carried out as laid out in the Statute.

I wait for a response as to why the Applicant has ignored the proper requirement.

Regards.

Ezmie Smith



## Popovich, Nicholas

---

**From:** Ezmie Smith <smithezmie@gmail.com>  
**Sent:** Sunday, November 12, 2023 12:24 PM  
**To:** Department of Planning; Pandohie, Haroon; Popovich, Nicholas  
**Cc:** 'Jenny manderson'; 'Gwen McLaughlin'; Jrmoore1067@gmail.com  
**Subject:** [EXTERNAL] RE: Re: Notice of Planning Application 5C77

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**Cc:** 'Jenny manderson' <jen3612@hotmail.com>; 'Gwen McLaughlin' <GMcLaughlin@tridenttrust.com>; 'Jrmoore1067@gmail.com' <Jrmoore1067@gmail.com>  
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Ezmie Smith



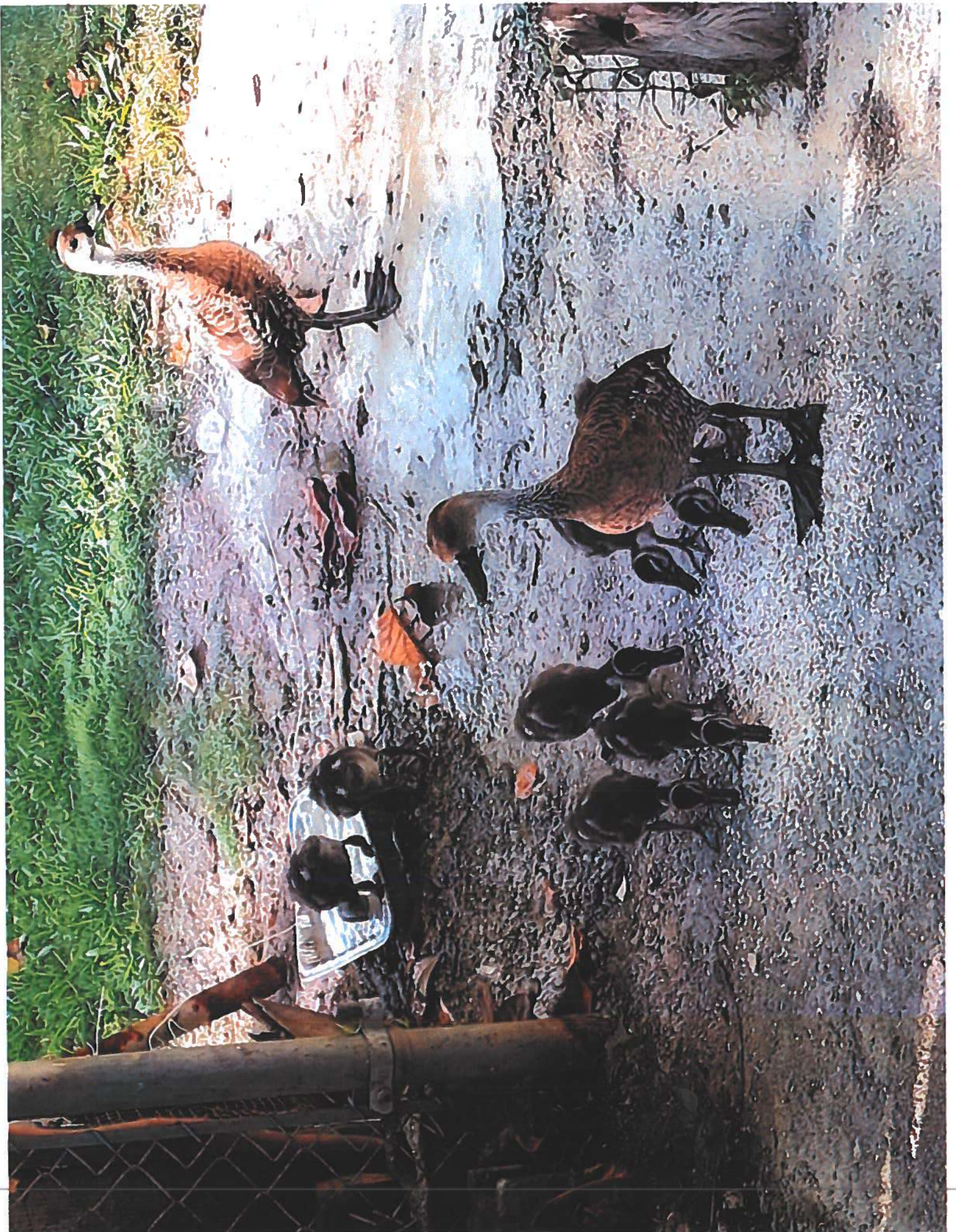




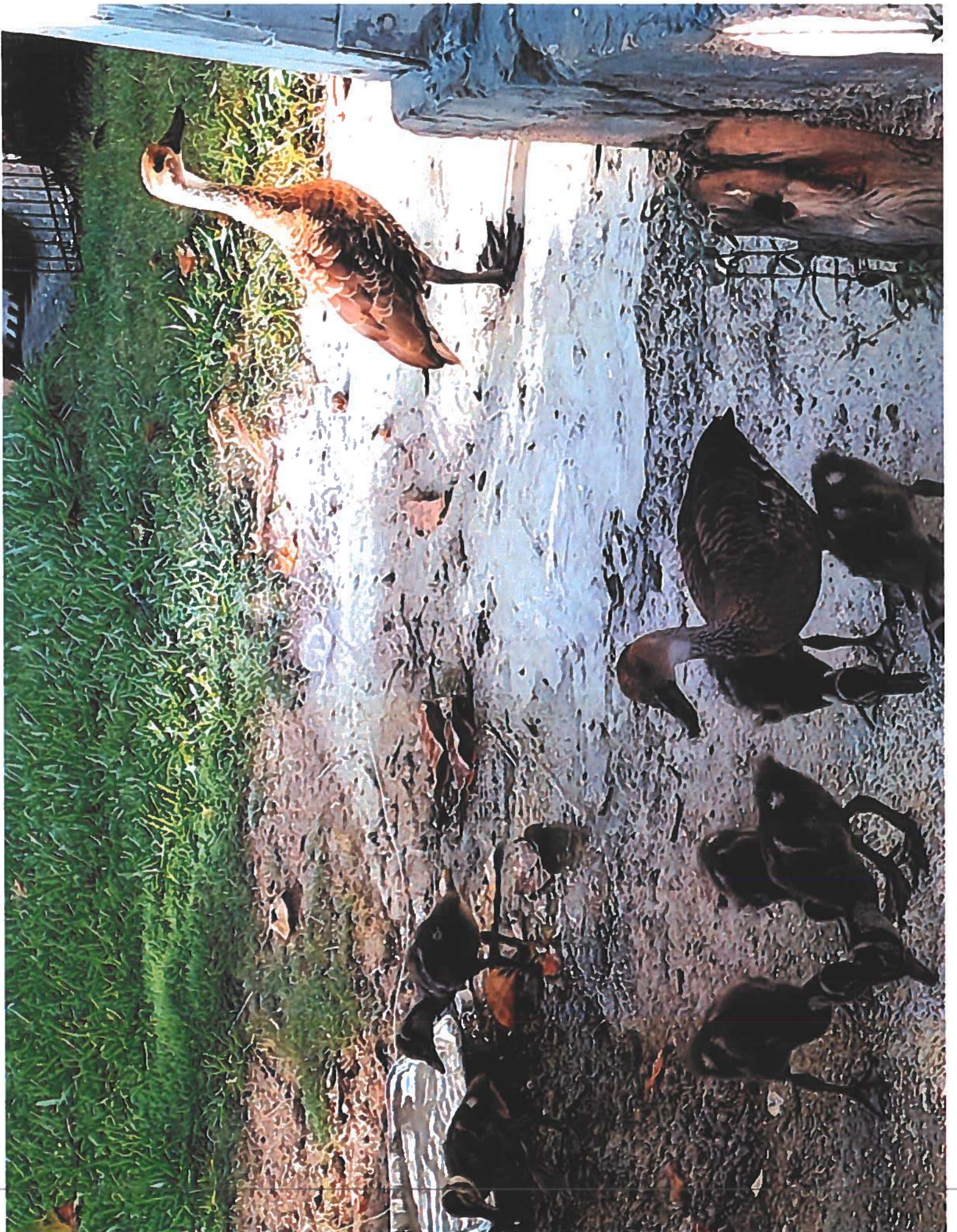




















## Appendix F



PROFESSIONAL PLANNING  
& DEVELOPMENT SERVICES  
CAYMAN LTD.

Jessica Peacey MRTPI AssocRICS

1.345.9253870

jess@ppdscayman.com

1<sup>st</sup> March 2024

Dear Central Planning Authority,

**Application for residential development on 5C 77 (P23-0940)**

We are seeking approval for a multi-unit residential development on block 5C 77, zoned Low Density Residential (LDR). The proposed development consists of:

- 95 residential units arranged across 12 blocks with a mix of 24x 2-bedroom units and 71x 1-bedroom units.
- Pool.
- Gym/clubhouse.
- 4 cabanas.
- Sign.

It is our contention that the proposed development is sited in a suitable location and appropriately designed to ensure no detrimental harm to the amenity of neighbouring properties.

**1. Previous application**

Through the previous refusal (CPA/17/23; item 2.5 P23-1086) on 16<sup>th</sup> August 2023, we acknowledge the Authority's concerns that the application did not demonstrate suitability nor speak to conformity with Regulation 9(8) regarding mass, scale, and intensity of use. Our commitment to addressing these concerns consists of this document addressing the concerns and amendments made for the current application which are detailed below:

- (i) Integration of stormwater management features such as swales and catch basins.
- (ii) Enhancements in access and driveway design.
- (iii) A 4.06% reduction in floor area.
- (iv) A revised site layout aimed at increasing the distance of proposed units from shared boundaries.

**2. Application site**

The application site is 6.34 acres/276,170 sq ft of undeveloped land. It is zoned Low Density Residential with no overlays or designations requiring consideration.

The immediate area is residential in nature consisting of a mix of single family, duplexes, and apartments, additionally a CUC infrastructure site.

The site is accessed from Willie Farrington Drive which is fed by John Jefferson Snr Drive to the north, connector road to Esterley Tibbetts Highway (ETH), and West Bay Road to the south which leads to neighbourhood amenity facilities.

**3. Legislative and policy framework**

- (i) Development and Planning Regulations (2024 revision)

*Regulation 8(1)(vii):*

This Regulation requires a minimum of 1.5 parking spaces per apartment/townhouse unit which equates to 143 parking spaces for the development.

177 parking spaces are proposed of which 6 are designated as accessible parking spaces.

**Regulation 8(2)(c):**

This Regulation permits a maximum height of 3 storeys or 40 feet, whichever is less. The proposed development is a maximum of 2 storeys in height with a measurement of 26'-6" to the roof apex.

**Regulation 9(8):**

Permits apartments/townhouses in 'suitable locations' and subject to conformity with set parameters. Suitability shall be addressed later in this document, the following sets out the relevant criteria of this regulation and reflects upon the proposed development:

Regulation	Allowed	Proposed
(a) Nr of units and bedrooms	95 units 152 bedrooms	95 units 119 bedrooms
(b) Minimum lot size	25,000 sf	276,170 sf
(c) Minimum lot width	100 feet	87'-1"
(d) Maximum site coverage	30%	16.96%
(e) Front and rear setbacks	20 feet	286'-7" and 54'-3", respectively
(f) Side setbacks	10 ft (1 storey)/15 ft (1+ storey)	50'-1" (north) and 48'-5" (south)

Based on the above comparison table only one variance is required due to the lot shape. The architectural team have submitted a variance request for the lot width under separate cover.

(ii) **Development Plan 1997**

o **1.3 Strategy**

Seeks to:

*"(a) accommodate the present and future population of the Cayman Islands to the best advantage having regard to the quality of life and the economic well-being of the people and to their individual requirements."*

The development responds to the market demand for affordable housing in Cayman, more specifically for the district of West Bay.

o **2.6 Other Material Considerations**

Establishes the purpose of setbacks are to achieve the following:

- (a) to provide adequate natural light, ventilation and privacy to all buildings;
- (b) to provide amenity space and to facilitate landscaping around buildings;
- (c) to maintain and enhance the quality and character of development fronting a road;
- (d) to provide a buffer between buildings on neighbouring lots; and
- (e) to avoid or minimise any negative impact the development or use of one lot may have on the occupants of a neighbouring lot."

The design of the development incorporates significant setbacks, often double than what is set out in the Regulations. Such an approach seeks to protect the amenities of neighbouring properties.

o Section 3.01

With regards to Residential Development Zones this section provides minimal guidance regarding development, however, it recognises:

*“The map indicates the location of three categories of residential zones, i.e. those intended primarily for low, medium and high density developments, respectively”.*

The site is located in the low density residential zone and the proposed development meets the density allowable for the number of units and proposes a mix of bedrooms which is below the maximum allowance.

4. Suitability

(i) Community need

The documented surge in rental prices in Grand Cayman, particularly in West Bay and its neighbouring districts, highlights a critical need for affordable housing to meet market demand. The escalation in rental prices is well documented, Members are invited to consider the present and future need for affordable housing in Grand Cayman, and specifically West Bay and close by districts.

*Rental price*

The year-on-year escalation in rental prices, evidenced by the Economic and Statistics Office Annual Consumer Price Index reports, paints a compelling picture.

2022-2023	2021-2022	2020-2021	2019-2020	2018-2019	2017-2018	2016-2017
12.8% ↑	3.3% ↑	5.1% ↑	5.9% ↑	19.7% ↑	0.0% ↔	0.2% ↑

From 2016-2023, the percentages fluctuated along an increasing trajectory, with a significant 12.8% increase in 2022-2023 alone. The post-COVID recovery period has particularly witnessed a sharp rise in household rental costs, posing a direct challenge to the financial well-being of Cayman’s residents.

*Growth in West Bay*

Examining the 2021 Census Report from the Economic and Statistics Office further emphasises the urgency.

	2010	2021	% change
GT	12332	15331	24.32%
WB	4552	6408	40.77%
BT	3810	5478	43.78%
NS	540	726	34.44%
EE	502	696	38.65%

West Bay emerges as the second fastest-growing district in Grand Cayman, experiencing a remarkable increase in population from 2010 to 2021. The robust growth in West Bay, along with similar trends in neighbouring districts, underscores the need for additional housing options to accommodate the expanding

community. The development of apartments/townhouses represents an efficient and sustainable use of land.

*Upcoming developments*

In the short-medium term, a series of upscale hotel and luxury residence developments will be completed in George Town and West Bay:

- Vida
- Dolphin Point
- Barkers Beach Resort
- Hotel Indigo
- The Shores
- Old Hyatt (ETH)
- Lacovia
- One GT
- Kailani
- Grand Hyatt
- The Watermark
- The Westin (extension)

The launch of these projects is expected to heighten the demand for labour, further intensifying the strain of available housing in these districts resulting in anticipated further rental cost increases.

*Practical evidence*

As members are aware the applicant for this application also developed 19 North. The applicant retained several units as rental stock. Over the last three years for each advertised unit they have experienced an average of 10-15 enquiries with the unit normally rented within 24-48 hours of showings. The developer highlighted an experience in February regarding high demand:

*"I recently put an advert up on 6<sup>th</sup> February around 4pm. I received 23 inquiries from time of upload to end of day on 7<sup>th</sup>. I coordinated 6 showings (post tenant screening) with 4 of the showings wanting the unit. Lease signed and deposit received same day as showing".*

This recent example clearly demonstrates the current high demand for well-located modern living residences in West Bay.

*Rationale for additional units*

Given the escalating rental prices, the rapid growth in West Bay, and the impending surge in demand due to upcoming developments, the approval of the application for 95 additional units becomes not just a necessity but a logical response to the evolving needs of the community. The proposed units aim, to address the growing housing demand, ensuring that residents have access to affordable and suitable living spaces in the face of these changing dynamics. We urge the Authority to consider the broader context and the genuine necessity for expanding housing options in Grand Cayman, ultimately enhancing the quality of life for all residents.

(ii) Enhancing community diversity and inclusivity

One of the primary objectives of this proposed development is to contribute to the diversification of housing options within the community. The creation of apartment units is not only a response to the evolving housing needs of the area but an essential step towards fostering cohesive and inclusive communities. By offering a variety of housing choices, we aim to accommodate a wide range of residents, thereby enriching the social fabric of the neighbourhood and aligning with Strategy 1.3 of the Development Plan.

(iii) Harmonising with surrounding character

Members are invited to note that 57.07% of planning notices issued for the 450' radius were sent to owners of apartments/townhouses. Whilst 'suitable location' is not defined in the Regulations, occasionally the Authority have considered the notification radius as indicative of the 'location' when considering apartment/townhouse developments. With more than half of properties within 450' of the application site being apartments/townhouses this suggests further apartment/townhouses would be suitable for the location.

In designing the current proposal, the project team was critically aware that development along Willie Farrington Drive being between 15'-28' in height with one or two storeys, consisting of a mix of houses/duplexes and apartments, and being eclectic in design.

The resultant scheme incorporates a simple mono-pitch roof design with the upper measurement being 26'6" for two-storey development to minimise any impact on the surrounding area.

The developable area of the site is set back 286'-7" from the road frontage of Willie Farrington Drive and the built form is approximately 50' from the boundaries of the site. These factors, together with the two-storey nature of the development which is arranged as individual blocks of 8 units (plus one of 7) contributes to minimising the mass and scale of the development, consequently ensuring significant harm is not caused to the character of the area.

(iv) Intensity of use

We have reflected upon the density of other multi-unit developments in the immediate area:

Block	Parcel	Parcel size	# units	Density
5C	442	5 ac	75	15
5C	456	0.5646 ac	6	11
5C	76	0.40 ac	3	15
5C	280	0.40 ac	6	14.57
5C	458 (198)	1.051 ac	24	22.83
5B	369 (125)	1.399 ac	20	14.29
<b>Average</b>				<b>15.44</b>

The proposed development represents a density of 15 units/ac which is in line with the parameters of the Regulations and aligns with the density of other multi-unit developments in the area.

The bedroom density and site coverage fall below the thresholds allowed; this was a conscious decision by the project team to minimise the intensification of the site.

The development site is strategically positioned with the benefit of John Jefferson Snr Dr to the north, leading to ETH, being able to accommodate vehicles coming/going from the east and West Bay Road providing local access to community facilities and amenities sited to the south. Members are invited to consider this arrangement in reassessing the intensity of the development.



(v) Preserving amenity for neighbouring properties

Respecting the enjoyment of amenity for neighbouring properties is of paramount importance. As previously mentioned, the built form is sited a significant distance from shared boundaries, is two storey, and the development has been designed with balconies and patios facing inward towards a courtyard. These design characteristics contribute to negating any potential impact on the amenity attributes of neighbouring properties such as outlook, noise, and overshadowing.

(vi) Optimal parcel size

The development site exceeds the minimum lot size requirement for a apartments development and site coverage falls notably below the maximum permitted. This indicates efficient use of developable land and also ensures ample space to execute design with consideration to landscaping, stormwater management, liveability, and parking, which will ultimately enhance the quality of life for future residents.

(vii) Site constraints

The are no physical constraints on the site that would prevent the development of apartments.

(viii) Infrastructure

Sufficient infrastructure serves the site (e.g. public road, water line, electrical service) and in the area (commercial retail, recreational sports, religious centres, grocery stores, etc.) to support the residents of the proposed apartments, which also ensure future residents can integrate and contribute to the community.

**5. Notification procedure and objections**

In response to comments regarding the notification procedure, for the avoidance of doubt, notices were sent to 205 owners located within the defined 450' notification radius. Of the 205 notices sent, owners of 7 block and parcels responded, often owners of more than one site, this represents 3.4% of the total number notified.

Some of the concerns raised can be covered by conditions. For the remaining ones relating to character, density, and amenity we consider the above content addresses the concerns.

**6. Conclusion**

The proposed development respects the maximum density allowances, incorporates stormwater management measures, provides ample parking, and limits the development footprint to nearly half of that permitted.

In conclusion, our development embodies a commitment to responsible and harmonious growth seeking to meet the needs of Cayman and the wider West Bay Community. We believe our vision contributes positively to community life, fostering inclusivity, and thoughtful design.

Best regards,



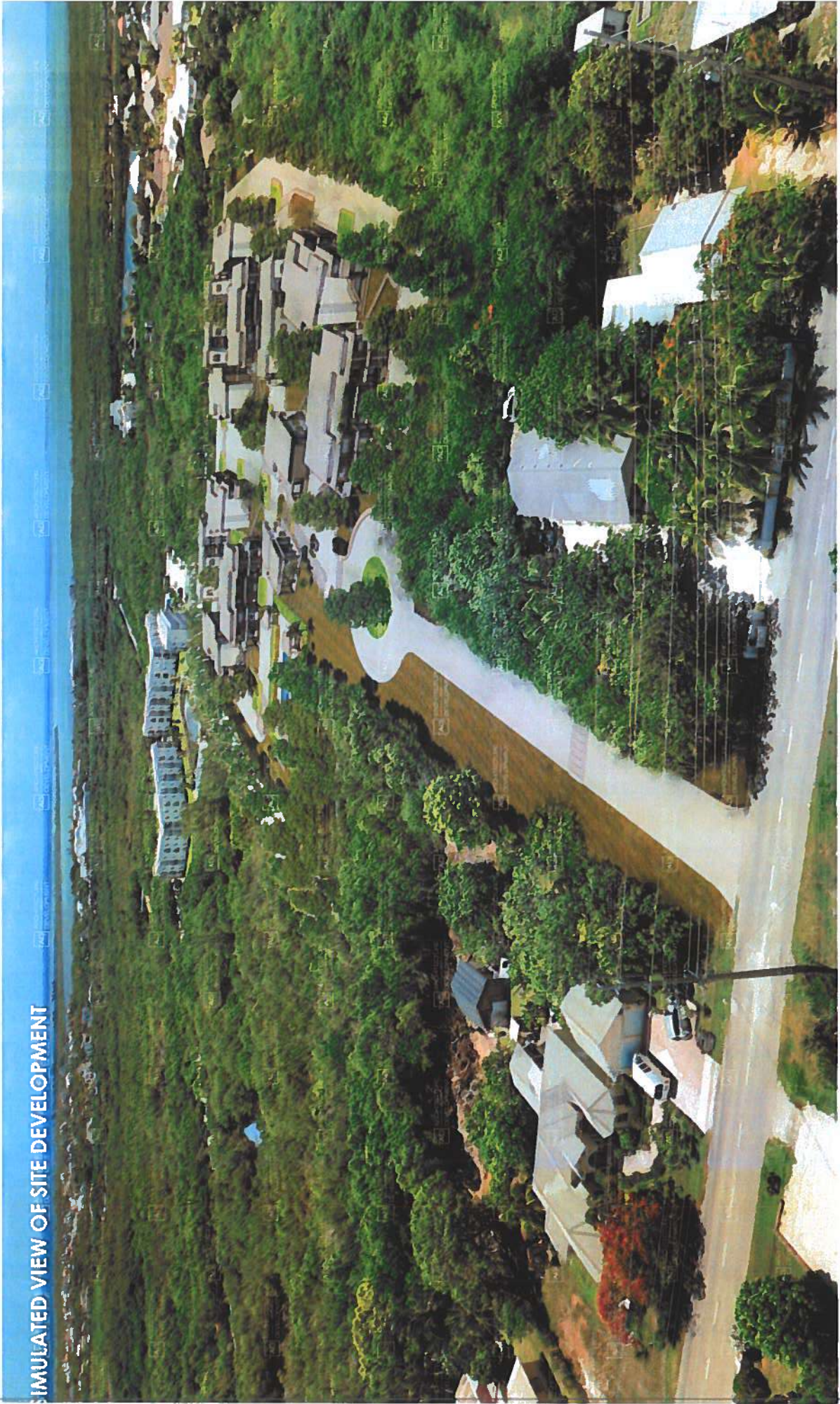
**Jess Peacey MRTPI AssocRICS**

Principal Planner

Professional Planning & Development Services (PPDS) Cayman Ltd

C: 1.345.925.3870 | O: 1.345.746.4995 | [www.ppdscayman.com](http://www.ppdscayman.com)

**SIMULATED VIEW OF SITE DEVELOPMENT**



**SIMULATED VIEW OF SITE DEVELOPMENT**



Willie Farrington Dr

Willie Farrington Dr

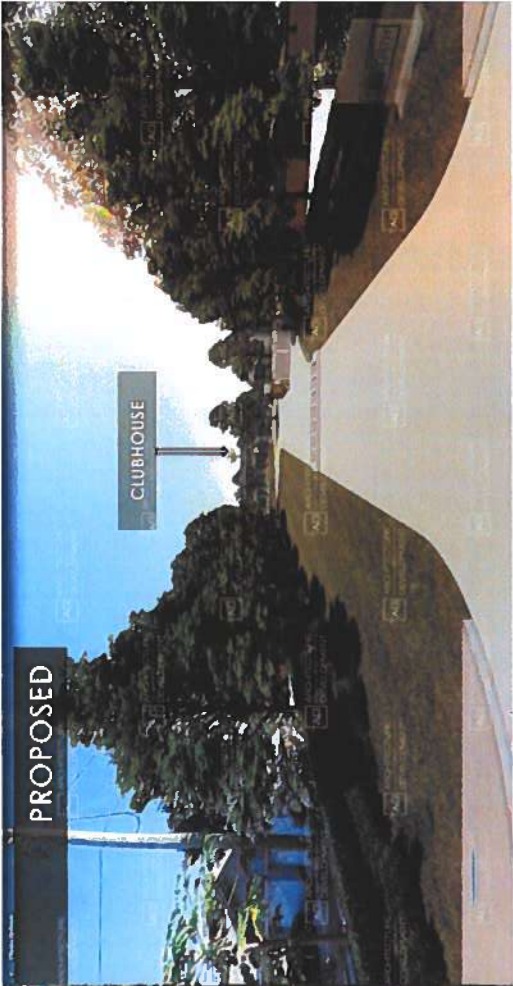
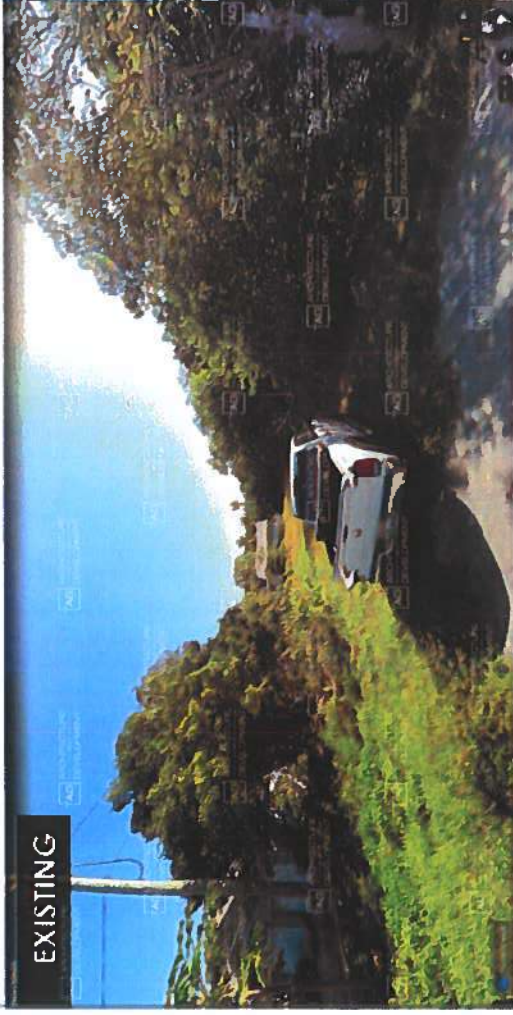
Willie Farrington Dr

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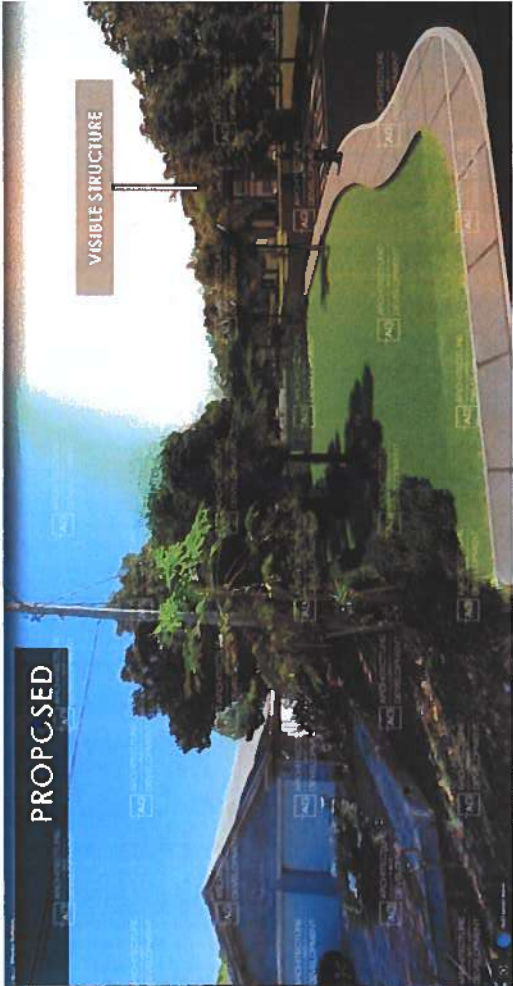
Elizabeth St

Wool Bus South  
A/C Office

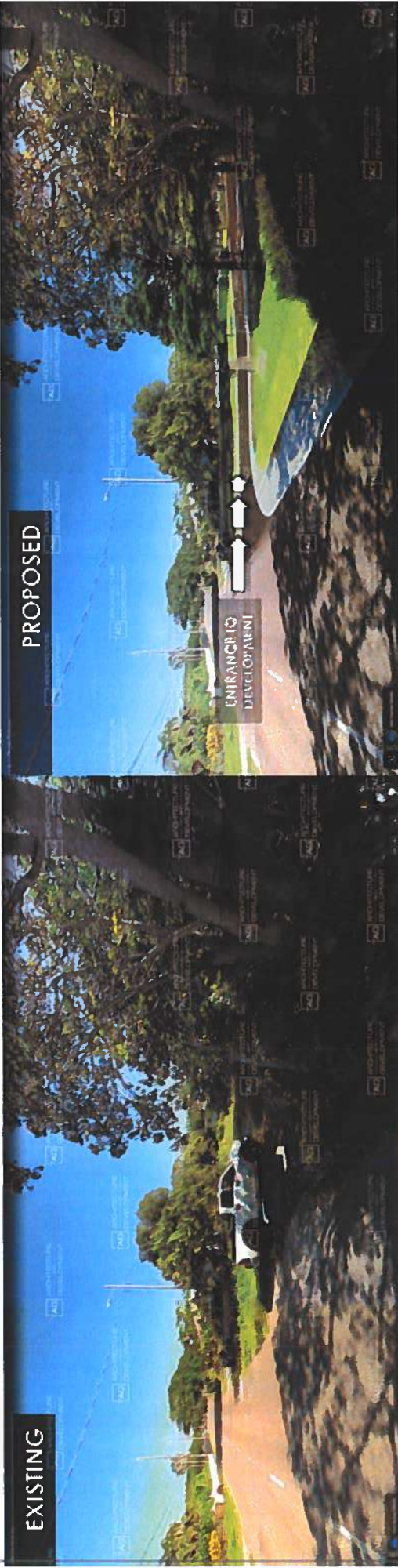
**STREET VIEW FROM WILLIE FARRINGTON DRIVE**



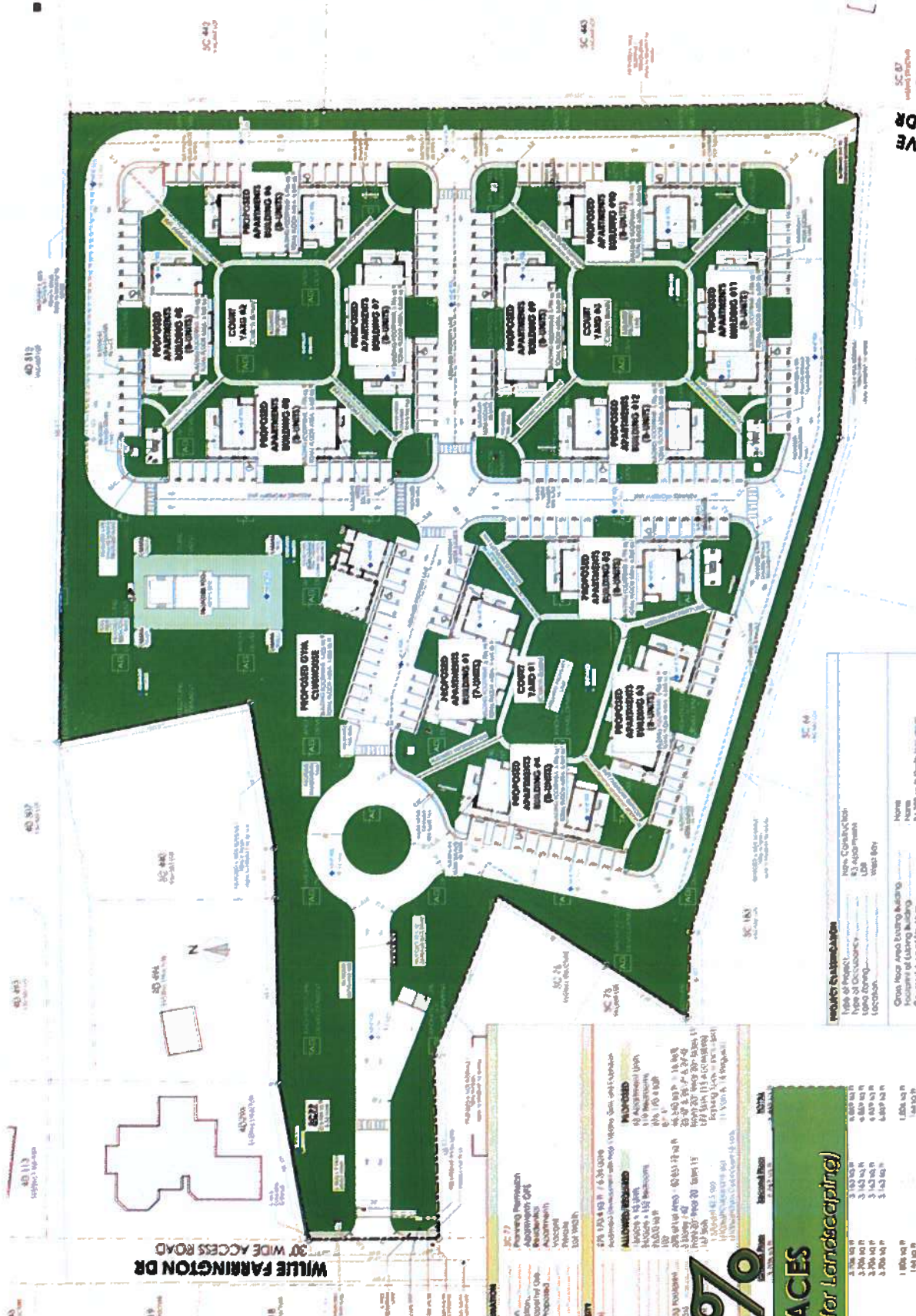
**STREET VIEW FROM WILLIE FARRINGTON DRIVE**



**STREET VIEW FROM WILLIE FARRINGTON DRIVE**







Category	Area (sq ft)	Notes
Site Area	1,100,000	
Proposed Apartment Buildings	400,000	
Proposed Courtyards	150,000	
Proposed Green Spaces	550,000	
<b>Total Green Spaces</b>	<b>550,000</b>	
<b>% of Total Site Area</b>	<b>+40%</b>	

**+40%**

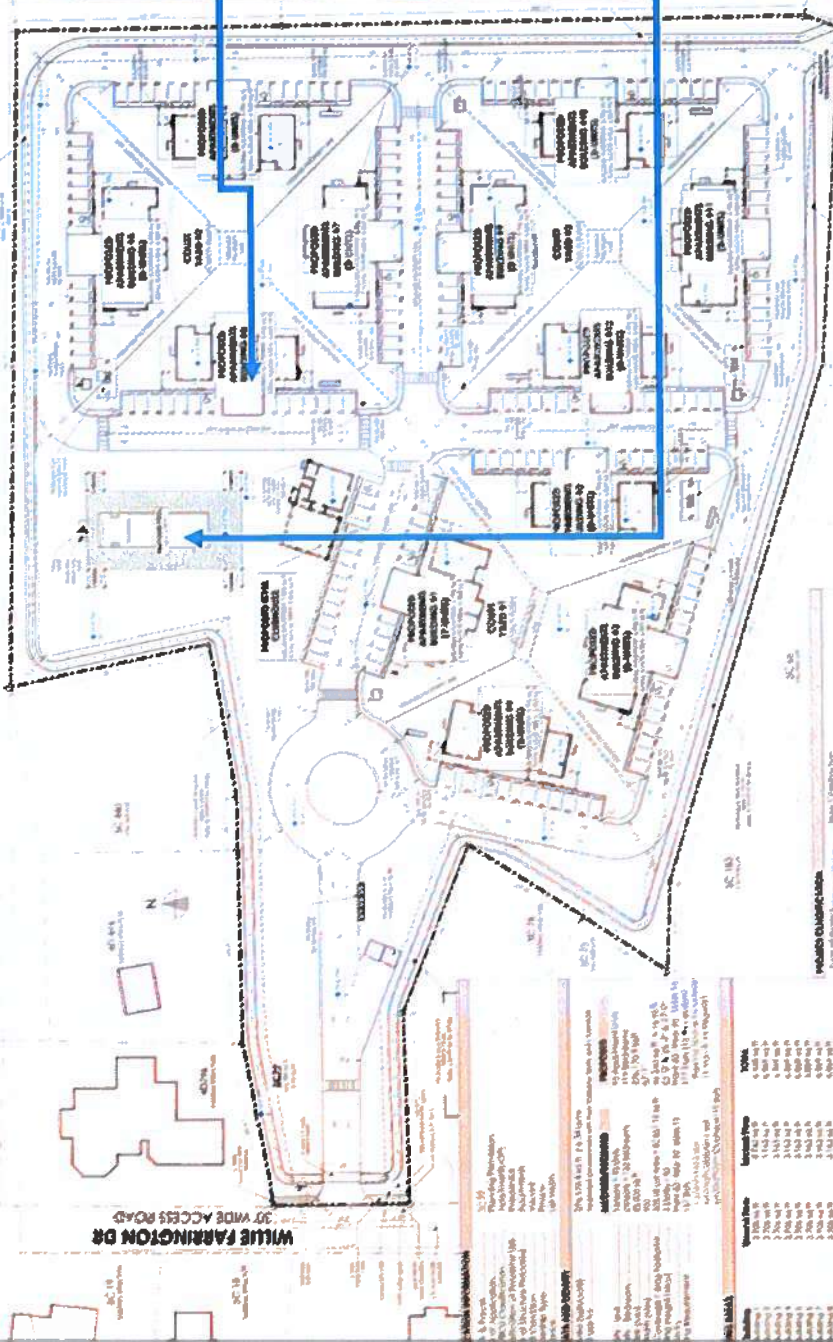
**GREEN SPACES**  
(Open spaces for Landscaping)

Item	Quantity	Notes
Proposed Apartment Buildings	10	
Proposed Courtyards	10	
Proposed Green Spaces	550,000	

Site Name: [Blank]  
 Site Address: [Blank]  
 City: [Blank]  
 State: [Blank]  
 Zip: [Blank]

Scale: 1" = 100'  
 Date: [Blank]

# VIEWS FROM AMENITY STRUCTURES



VIEW FROM BALCONY

VIEW FROM FOGG DECK

GENEVIEVE BODDEN DR

**PROPOSED QUANTITIES**

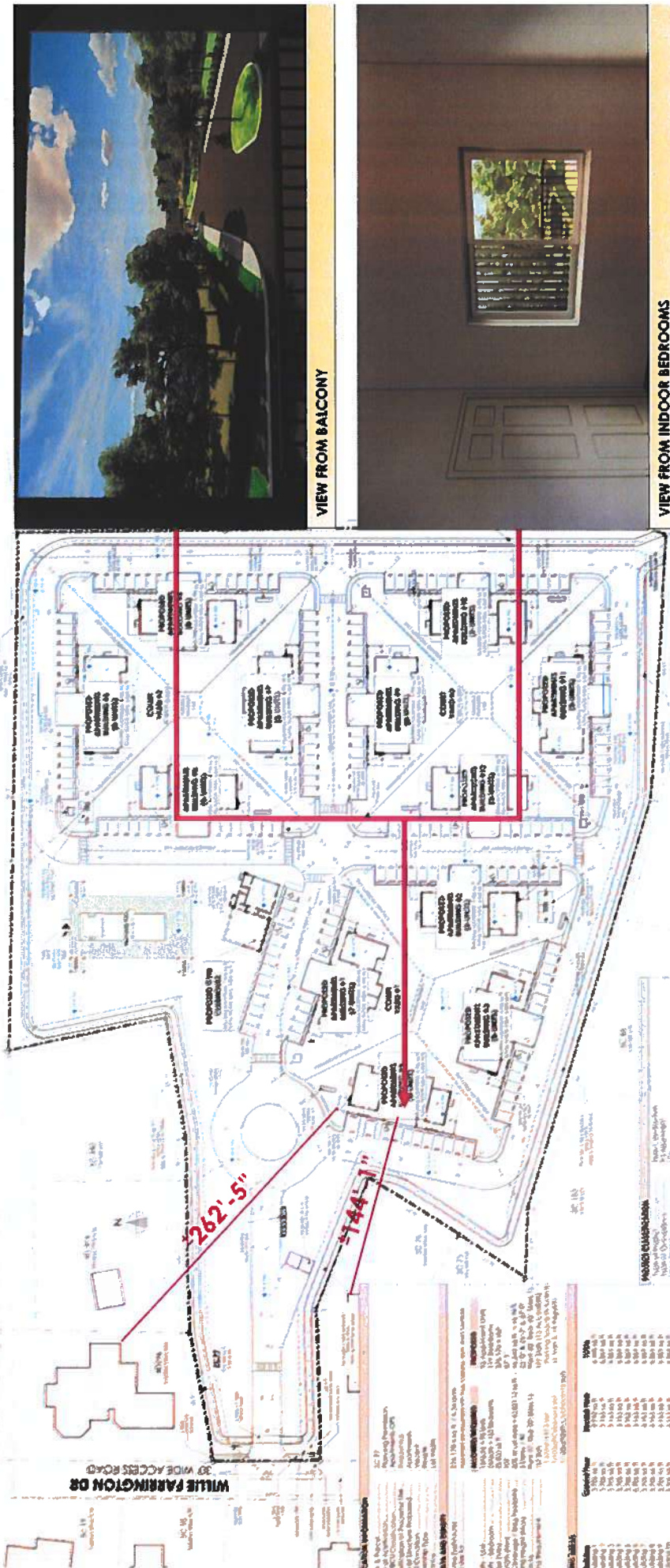
Item	Quantity	Unit
Asphalt Paving	1,124	SF
Gravel Paving	1,124	SF
Concrete Paving	1,124	SF
Grass	1,124	SF
Planting	1,124	SF
Lighting	1,124	SF
Signage	1,124	SF
Site Work	1,124	SF
Construction	1,124	SF
Demolition	1,124	SF
Excavation	1,124	SF
Foundation	1,124	SF
Structure	1,124	SF
Roofing	1,124	SF
Interior	1,124	SF
Exterior	1,124	SF
Site Preparation	1,124	SF
Final Site	1,124	SF

**Site Plan**

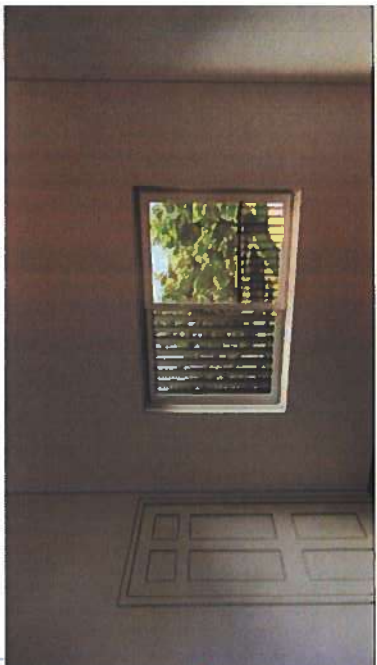
Item	Quantity	Unit
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Grass	1,124	SF
Planting	1,124	SF
Lighting	1,124	SF
Signage	1,124	SF
Site Work	1,124	SF
Construction	1,124	SF
Demolition	1,124	SF
Excavation	1,124	SF
Foundation	1,124	SF
Structure	1,124	SF
Roofing	1,124	SF
Interior	1,124	SF
Exterior	1,124	SF
Site Preparation	1,124	SF
Final Site	1,124	SF



# VIEWS FROM APARTMENT BUILDING



VIEW FROM BALCONY



VIEW FROM INDOOR BEDROOMS



GENEVE DR

**UNIT SCHEDULE**

Unit Type	Count	Area (sq ft)	Volume (cu ft)
1-Bedroom	100	1,100	11,000
2-Bedroom	100	1,500	15,000
3-Bedroom	100	2,000	20,000
4-Bedroom	100	2,500	25,000
5-Bedroom	100	3,000	30,000
6-Bedroom	100	3,500	35,000
7-Bedroom	100	4,000	40,000
8-Bedroom	100	4,500	45,000
9-Bedroom	100	5,000	50,000
10-Bedroom	100	5,500	55,000
11-Bedroom	100	6,000	60,000
12-Bedroom	100	6,500	65,000
13-Bedroom	100	7,000	70,000
14-Bedroom	100	7,500	75,000
15-Bedroom	100	8,000	80,000
16-Bedroom	100	8,500	85,000
17-Bedroom	100	9,000	90,000
18-Bedroom	100	9,500	95,000
19-Bedroom	100	10,000	100,000
20-Bedroom	100	10,500	105,000
21-Bedroom	100	11,000	110,000
22-Bedroom	100	11,500	115,000
23-Bedroom	100	12,000	120,000
24-Bedroom	100	12,500	125,000
25-Bedroom	100	13,000	130,000
26-Bedroom	100	13,500	135,000
27-Bedroom	100	14,000	140,000
28-Bedroom	100	14,500	145,000
29-Bedroom	100	15,000	150,000
30-Bedroom	100	15,500	155,000
31-Bedroom	100	16,000	160,000
32-Bedroom	100	16,500	165,000
33-Bedroom	100	17,000	170,000
34-Bedroom	100	17,500	175,000
35-Bedroom	100	18,000	180,000
36-Bedroom	100	18,500	185,000
37-Bedroom	100	19,000	190,000
38-Bedroom	100	19,500	195,000
39-Bedroom	100	20,000	200,000
40-Bedroom	100	20,500	205,000
41-Bedroom	100	21,000	210,000
42-Bedroom	100	21,500	215,000
43-Bedroom	100	22,000	220,000
44-Bedroom	100	22,500	225,000
45-Bedroom	100	23,000	230,000
46-Bedroom	100	23,500	235,000
47-Bedroom	100	24,000	240,000
48-Bedroom	100	24,500	245,000
49-Bedroom	100	25,000	250,000
50-Bedroom	100	25,500	255,000
51-Bedroom	100	26,000	260,000
52-Bedroom	100	26,500	265,000
53-Bedroom	100	27,000	270,000
54-Bedroom	100	27,500	275,000
55-Bedroom	100	28,000	280,000
56-Bedroom	100	28,500	285,000
57-Bedroom	100	29,000	290,000
58-Bedroom	100	29,500	295,000
59-Bedroom	100	30,000	300,000
60-Bedroom	100	30,500	305,000
61-Bedroom	100	31,000	310,000
62-Bedroom	100	31,500	315,000
63-Bedroom	100	32,000	320,000
64-Bedroom	100	32,500	325,000
65-Bedroom	100	33,000	330,000
66-Bedroom	100	33,500	335,000
67-Bedroom	100	34,000	340,000
68-Bedroom	100	34,500	345,000
69-Bedroom	100	35,000	350,000
70-Bedroom	100	35,500	355,000
71-Bedroom	100	36,000	360,000
72-Bedroom	100	36,500	365,000
73-Bedroom	100	37,000	370,000
74-Bedroom	100	37,500	375,000
75-Bedroom	100	38,000	380,000
76-Bedroom	100	38,500	385,000
77-Bedroom	100	39,000	390,000
78-Bedroom	100	39,500	395,000
79-Bedroom	100	40,000	400,000
80-Bedroom	100	40,500	405,000
81-Bedroom	100	41,000	410,000
82-Bedroom	100	41,500	415,000
83-Bedroom	100	42,000	420,000
84-Bedroom	100	42,500	425,000
85-Bedroom	100	43,000	430,000
86-Bedroom	100	43,500	435,000
87-Bedroom	100	44,000	440,000
88-Bedroom	100	44,500	445,000
89-Bedroom	100	45,000	450,000
90-Bedroom	100	45,500	455,000
91-Bedroom	100	46,000	460,000
92-Bedroom	100	46,500	465,000
93-Bedroom	100	47,000	470,000
94-Bedroom	100	47,500	475,000
95-Bedroom	100	48,000	480,000
96-Bedroom	100	48,500	485,000
97-Bedroom	100	49,000	490,000
98-Bedroom	100	49,500	495,000
99-Bedroom	100	50,000	500,000
100-Bedroom	100	50,500	505,000



## Appendix G

**BEFORE THE CENTRAL PLANNING AUTHORITY ON 11 OCTOBER 2023**

**AQUA BAY (Butler Development Group) Block 5D Parcel 4 & Block 5C Parcel 234 (P23-0275)**

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**OBJECTORS' SPEAKING NOTE**

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**A. INTRODUCTION**

1. The Applicant, Butler Development Group, has applied for planning permission for 38 apartments and a pool, crammed into a 11-storey beachfront development on a 1.41 acre parcel.
  2. The proposal would constitute gross overdevelopment and cause unacceptable harm to neighbouring amenity at Silver Sands and The Palms. The proposal is strikingly out of keeping with the surrounding area and would overshadow its neighbours. Not only should this be obvious to the CPA as a matter of planning judgement, but the scale of overdevelopment is so egregious that it breaches even the generous tolerances provided for by the Development and Planning Regulations (2022 Revision) (“**the Regulations**”).
  3. The CPA cannot lawfully grant planning permission for each of the following two reasons:
    - 3.1. First, the 11-storey development would breach regulation 8(2)(e)(i) of the Regulations. The CPA has no power to waive that breach. If the Applicant submits a revised application for planning permission to address that breach, the CPA would need to consult afresh on the revised application. This is addressed at section C below.
    - 3.2. Second, the density of development would breach regulation 10(1)(b) of the Regulations. Contrary to the Planning Department’s suggestion, the CPA is not empowered to grant a variance of regulation 10(1)(b). It is irrelevant what the density
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of development would be if Parcel 5C 234 were considered in combination with Parcel 5D 4 because those parcels are physically separate and regulation 11(1) of the Regulations is therefore inapplicable. This is addressed at section D below.

4. For each of those reasons, the application must – without more – be refused. There is no point in conducting further enquiries because, whatever the outcome of those enquiries, it is inevitable that the current application will have to be refused.
  5. Further, even if the proposed development were not prohibited by regulations 8(2)(e)(i) and 10(1)(b) of the Regulations, it would still not be open to the CPA to grant permission at this time for each of the following two reasons:
    - 5.1. First, given that (without conditions) the proposed development would plainly have an adverse impact on the critical habitat of a protected species, it would be (a) bound to consult the National Conservation Council (“the NCC”) under s.41(3) of the National Conservation Act (“the NCA”) and (b) prohibited from granting permission without the NCC’s approval under s.41(4) of the NCA. This is addressed at section E below.
    - 5.2. Second, even if the CPA had the power to dispense with the height and density requirements of the Regulations (which it does not), it could not rationally conclude that this would be appropriate development without carrying out reasonable enquiries. In this case, that would mean undertaking (a) a high-level assessment of visual impact on the receptors in the units of Silver Sands and The Palms, (b) an assessment of the impact of the proposed development on daylight, sunlight and overshadowing of neighbouring properties, and (c) an assessment of the cumulative impact of high-rise, high-density beachfront development that would be liable to follow the unprecedented grant of such permission on this site. The Planning Department has failed to conduct any such inquiries and, accordingly, the CPA is not equipped to reach a lawful conclusion on these issues. This is addressed at section F below.
  6. Before addressing those matters, the objectors raise a preliminary point about the fairness of the procedure to be followed at this meeting.
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## **B. PRELIMINARY POINT – PROCEDURAL FAIRNESS**

6. The Planning Department correctly recognises that the objectors have the right to be heard on this application for planning permission by making both written and oral submissions.
  7. For that right to be effective, it is axiomatic that the objectors be provided with sufficient information and time to make proper representations. As Sir Michael Fordham puts it in his Judicial Review Handbook: *“This aspect of fair procedure allows representations to be properly informed, eliminates unfair secrecy, and avoids the affected person later being unfairly taken by surprise”* (7<sup>th</sup> Ed, para.61.6). In the context of planning inquiries: *“Procedural fairness requires that (i) a party to a planning inquiry knows the case he has to meet and (ii) has a reasonable opportunity to adduce evidence and make submissions in relation to that case”* (*Barlow v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 146 QB, para.6, *per* Andrews J)
  8. In this case, the Planning Officer (Nick Popovich) told the objectors on 3 October 2023 that:
    - 8.1. They could only make written submissions to the CPA if they submitted those representations before the Planning Department had disclosed the agenda document containing (a) the responses from statutory consultees, including the Department of Environment on behalf of the NCC or (b) the Planning Department’s analysis of the issues in the case.
    - 8.2. The objectors could only make oral submissions of up to 10 minutes.
  9. Taken as a whole, the procedure proposed by the Planning Officer would not be fair, in that:
    - 9.1. The objectors could not make proper submissions on the application without seeing the evidence from the statutory consultees or the advice from the Planning Department.
    - 9.2. That unfairness could be remedied by affording the objectors an opportunity to make oral submissions, supported by a speaking note. However, the complexity of the issues
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and the serious adverse impact of the proposal on the objectors mean that 10 minutes would be manifestly insufficient to enable the objectors to do justice to their case.

9.3. The 10-minute limit appears to be arbitrary, in that it is not applied in all other cases and is unsupported by any policy setting out the criteria to be applied when determining how much time will be afforded to objectors.

10. In the circumstances, the objectors require 30 minutes to present their case. If they are denied that opportunity, they reserve the right to challenge the outcome of the meeting on the grounds of procedural fairness.

### **C. BREACH OF THE REGULATIONS ON HEIGHT**

11. As the Planning Department has noted, the proposed development site is within a Hotel/Tourism zone. The Regulations identify Cabinet's assessment of the outer limits for potentially appropriate development in this zone.

12. In addition to satisfying the maximum tolerances in the Regulations, any proposed development must also satisfy the requirement of the Development Plan that the CPA must "*prevent the over-development of sites*" and "*ensure that the scale and density of development are compatible with and sensitive to the physical characteristics of the site*" (para.3.04).

13. This proposal does not even satisfy the maximum tolerances in the Regulations. Regulation 8(2)(e) provides that:

*"(2) The maximum permitted height of a building—*

*...*

*(e) in a Hotel/Tourism zone, shall not exceed sixty-five feet or five storeys, whichever is less, but —*

*(i) when the building is a hotel or apartment in Hotel/Tourism zone 1 or in Hotel/Tourism zone 2, the maximum permitted height is one hundred and thirty feet or ten storeys, whichever is less...".*

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14. Although the CPA has the power to vary certain tolerances if it identifies the existence of “*exceptional circumstances*” that justify this (regulation 8(13)), that does not apply to the maximum number of permitted storeys in regulation 8(2).
15. The Regulations define that “*‘storey’ means that portion of a building included between the surface of any floor and the surface of the floor next above or if there be no floor above it, then the space between such floor and the ceiling next above it*”.
16. Thus, as the Planning Department correctly notes, the proposed parking garage constitutes a storey and the application is therefore for an 11-storey building. It follows that the application for planning permission must be refused.
17. Were the Applicant to advance a different design in an effort to overcome regulation 8(2)(e) of the Regulations, it would need to submit a revised application and give notice of that application to neighbouring owners so as to afford them an opportunity to make representations on the new design to the CPA. However, to be clear, the scale and density of any new design would need to be radically different for it to be compatible with the character of this area.

#### **D. BREACH OF THE REGULATIONS ON DENSITY**

18. Regulation 10(1)(b) provides that the maximum permitted apartment buildings in a hotel/tourism related development is 25/acre.
  19. The proposal is to develop 38 apartment units on Parcel 5D 4. The parcel is 1.41 acres and the density would therefore be 26.95/acre.
  20. There is no power to vary the maximum density limit of regulation 10(1)(b). It follows that the application must be refused.
  21. The Planning Department has suggested that the CPA should consider whether it is “*technically possible*” to combine Parcels 5D 4 and 5C 234, so as to bring the overall density below 25 units/acre. However, it would plainly be unlawful to do so for the following reasons:
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- 21.1. Regulation 11(1) permits the CPA to permit building on any lot that does not conform to regulation 10(1), but only if “*such building forms part of a development ...on a larger parcel of land of which such lot forms a part*”.
  - 21.2. As a matter of ordinary language a lot cannot form part of a larger parcel if it is not contiguous with that parcel.
  - 21.3. This is also clear from regulation 8(1) which requires parking to be provided on the parcel to which the application relates, unless it is on land within a certain proximity of the proposed building. If a parcel included non-contiguous land, then regulation 8(1) would be otiose.
  - 21.4. To permit the maximum limits of the Regulations to be sidestepped by relying on a different parcel of land would drive a coach and horses through the density limits set by the Regulations. On the Applicant’s approach, the limits of what is capable of constituting acceptable development could be swept aside by reference to an unconnected parcel of land. If one takes this extraordinary argument to its logical conclusion, there would be nothing in principle to stop the CPA granting permission to build skyscrapers on Seven Mile Beach.
22. It follows that the planning application must be refused. Again, a new application would require fresh consultation. However, to repeat the point made at section C above, the proposal would have to be radically altered for it to be acceptable.

## **E. CONSULTING THE NCC**

23. Section 41(3) of the NCA requires the CPA to consult the NCC in accordance with guidance notes if the grant of planning permission would be likely to have an adverse effect on the environment. “Adverse effect” means any risk to the environment and, accordingly, the threshold for s.41(3) is low (*Central Planning Authority v National Conservation Council*, CICA No.22 of 2022, para.21, *per* Sir Alan Moses). Importantly, whether there is likely to be a risk of environmental harm must be judged without regard to potential planning conditions (*ibid.*, para.38).
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24. In this case, the s.41(3) consultation duty is triggered because:

24.1. First, the guidance notes provide that s.41(3) is engaged because the proposed development is adjacent to a protected area.

24.2. Second, in any event, it is obvious that unconditional planning permission would cause environmental harm by impacting mature and hatching sea turtles, threatening to degrade a critical habitat, and deterring nesting. There is no rational basis for gainsaying the NCC's opinion on these matters.

25. It follows that the CPA is required to find that the proposed development would be likely to have an adverse effect on the environment and, on that basis, to consult the NCC under s.41 of the NCA.

26. Section 41(4) of the NCA then requires the CPA to seek the approval of the NCC if the adverse effect relates directly or indirectly to the critical habitat of a protected species. Again, given the expert opinion of the NCC on this point, there is no reasonable basis on which the CPA could conclude that the grant of planning permission *without conditions* would not risk harming the critical habitat of Green, Loggerhead, Hawksbill and Leatherback turtles. The CPA therefore requires the NCC's approval before it could allow the application for planning permission.

27. Although the NCC has already given an indicative list of the conditions that it would seek to impose under s.41(5) of the NCA, the CPA must still request the NCC's approval. This will have real utility because (a) the NCC's indication is only provisional and it may change its mind about allowing planning permission to be granted or the conditions to be attached, and (b) the NCC has stated that it wishes to see a list of any conditions proposed by the CPA before it provides its final views.

28. Given the CPA's press release in response to the Court of Appeal's judgment, it appears that the CPA has had some difficulty in accepting that it lost that case. However, the CPA's opinion on the Court of Appeal's judgment and its attempts to seek leave to appeal to the Privy Council are completely irrelevant for the purposes of the present application for

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planning permission. As the Supreme Court has explained: “*It is a well established principle of our constitutional law that a court order must be obeyed unless and until it has been set aside or varied by the court (or, conceivably, overruled by legislation)*” *R (Majera) v Secretary of State for the Home Department* [2022] AC 461, para.44, *per Lord Reed*. Were the CPA to grant planning permission in breach of the principles identified by the Court of Appeal, an appeal against its decision would inevitably succeed and it would be liable to pay costs on the indemnity basis for unreasonable conduct.

## F. CONDUCTING REASONABLE ENQUIRIES

29. It is axiomatic that a public decision maker must “*ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly*” (*Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014, 1065, *per Lord Diplock*).

30. In this case, if the proposal did not fall to be refused outright for breach of the Regulations (as set out at sections C and D above), then the key question for the CPA when determining this application would be: what impact would such a tall and high-density development have on its neighbours? To answer that question, the CPA would need to obtain information that it currently lacks.

31. The NCC has notified the CPA that: “*It is highly likely that the construction of the proposed development will lead to overshadowing and blocking of daylight / sunlight from the southernmost units at Silver Sands, and from a significant portion of The Palms*”. In light of this, the NCC has concluded that the CPA requires:

31.1. First, a high-level assessment of visual impact on the receptors in the units of both the Silver Sands and The Palms.

31.2. Second, an assessment of the impact of the loss of daylight and sunlight, and the impact of overshadowing on the neighbouring properties.

32. Without that information, it is impossible to see how the CPA would be equipped to make a properly informed assessment of the key planning consideration. Its decision would be

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*Tameside* irrational. Accordingly, even if the application did not fall to be refused for breach of the Regulations, and even if the CPA did not require the approval of the NCC, the CPA could not lawfully grant planning permission at this time.

33. There is a further, even more fundamental point:

33.1. The proposed development would be liable to lead to a radical change to the character of the area, in that it would set a precedent for the further redevelopment of low-rise condominiums into high-rise, high-density development. As the NCC has pointed out, the CPA should not sleepwalk into permitting such a radical change in the character of this part of the country. Rather, this is a matter that cries out for wider consultation and strategic planning.

33.2. The problem is that the CPA is in flagrant breach of its statutory duty to conduct such strategic planning. Section 10(1) of the Development and Planning Act (2021 Revision) requires that the CPA must, no less than every five years after the approval of a development plan, submit to Parliament a fresh survey and proposals for any alterations or additions to the development plan. The most recent development plan was approved in 1997. Extraordinarily, the CPA has for more than 20 years been in breach of its statutory duty to submit a fresh survey and proposed alterations to the plan.

33.3. In light of that serious breach of statutory duty, the CPA is not yet in a position to grant permission for the kind of development proposed by the Applicant. Any grant of permission would be liable to be quashed because it is materially affected by the CPA's breach of its duty under s.10(1) of the Development and Planning Act.

## **G. CONCLUSION**

34. For the reasons set out above, it would be unlawful for the CPA to grant this application for planning permission. Any grant of permission would be liable to be quashed on appeal, with the CPA liable to pay the costs of the appeal.

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