Withdrawn upon a Motion during the First Sitting of the Third Meeting of the 2024-2025 Session of Parliament.

CAYMAN ISLANDS

NATIONAL CONSERVATION (AMENDMENT) BILL, 2024

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A BILL FOR AN ACT TO AMEND THE NATIONAL CONSERVATION ACT, 2013 TO REFORM THE POWERS OF THE NATIONAL CONSERVATION COUNCIL; TO PROVIDE FOR A CONSERVATION APPEALS TRIBUNAL; AND FOR INCIDENTAL AND CONNECTED PURPOSES

WITHDRAWN

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Ministry of Sustainability and Climate Resiliency (SCR)

Memorandum of

OBJECTS AND REASONS

This Bill amends the National Conservation Act, 2013 ("the principal Act") to reform the powers of the National Conservation Council, and to provide for incidental and connected purposes.

Clause 1 provides the short title of the legislation.

Clause 2 amends section 2 of the principal Act to amend the definitions of the words "entity" and "directive".

Clause 3 amends section 3 of the principal Act to change the composition of the Council to reduce membership to twelve members. Section 3 is also amended to provide that Council may, with the approval of the Cabinet, and in accordance with regulations made under that section, delegate to any person any of the powers conferred on it by the legislation to the extent necessary to enable it to carry out its functions and to give effect to its decisions. It is provided that the delegation shall be in writing; and that the Council may, with the approval of the Cabinet or on the direction of the Cabinet, by written notice, at any time, revoke any of the powers so delegated.

Clause 4 repeals section 4 of the principal Act to abolish advisory committees.

Clause 5 amends section 6 of the principal Act to provide that the Director shall act as secretary to the Council.

Clauses 6, 7 and 8 amends sections 11, 16 and 17 of the principal Act to provide that the Council shall report the making of interim directives under those sections within five working days after making the interim directive. Where the Council fails to report the making of an interim directive within the period specified, the interim directive ceases to have effect on the expiration of the period of five days after the making of the interim directive. Notwithstanding this, an interim directive ceases to have effect in certain circumstances, including at such earlier time as the Council or the Cabinet may direct.

Clauses 9 and 10 amend sections 27 and 29 of the principal Act to delete the word "chairman" and substitute the word "chairperson", in conformity with modern principles of drafting to remove gender-neutral expressions from legislation.

Clause 11 inserts new sections 39, 39A and 39B to provide for appeals against decisions of the Council to a Conservation Appeals Tribunal and thereafter to the Cabinet. A new section 39 provides for the establishment of the Tribunal while a new section 39A provides for appeals to the Tribunal against a decision of the Council. A new section 39B provides for appeals from the Tribunal to the Cabinet. A person, if aggrieved by a decision of the Cabinet, may appeal to the court. It is provided that if a decision of the Council is being appealed, the decision shall not be of effect while it is subject to appeal or to subsequent appeal.

Clause 12 amends the principal Act by repealing and substituting section 41 of the principal Act. The proposed new section 41 provides that where the Council makes a recommendation regarding a proposed action, an entity shall comply with that recommendation unless it considers that there are good reasons not to do so. The proposed new section also provides that if the entity decides not to comply with the Council's recommendation, it shall notify the Council of the reasons for its decision.

Clause 13 inserts a new section 41A which provides for appeals by the Council to the Conservation Appeals Tribunal and to the Cabinet against a decision of an entity made under the proposed new section 41.

Clause 14 makes a minor amendment to section 43 of the principal Act to make it clear that the Council does not have to approve a proposed action by another entity, but to consider such an action upon request.

Clause 15 repeals and replaces section 44 of the principal Act to provide that no steps may be taken by an entity or a by a public officer to institute civil proceedings in any court in connection with matters arising out of the discharge of their public duties or against any entity or public officer for anything done in the performance of their duties under the legislation unless the approval of the Attorney General had been obtained.

Clause 16 repeals and replaces section 46 of the principal Act to provide for the management of the Environmental Protection Fund by the Cabinet.

Clause 17 amends the principal Act by repealing section 47 of the principal Act.

Clause 18 amends Schedule 2 to the principal Act to, among other things, provide further details regarding the composition of the Council. The Council shall consist of four public officers, and eight voting members appointed by the Cabinet, one of whom shall be nominated by the National Trust.

Clause 19 provides a new Schedule 2A which sets out the provisions which regulate the Conservation Appeals Tribunal.

Clause 20 provides that every appeal to the Cabinet and the court commenced under the principal Act and not determined at the date of the commencement of this amending Act shall be continued and completed as if this amending Act is not in force.

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A BILL FOR AN ACT TO AMEND THE NATIONAL CONSERVATION ACT, 2013 TO REFORM THE POWERS OF THE NATIONAL CONSERVATION COUNCIL; TO PROVIDE FOR A CONSERVATION APPEALS TRIBUNAL; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Act may be cited as the National Conservation (Amendment) Act, 2024.

Interpretation

2. The *National Conservation Act, 2013*, in this Act referred to as the "principal Act" is amended in section 2 as follows —

(a) in the definition of the word "**directive**", by deleting the words "section 11(3) or 17(7)" and substituting the words "section 11(3), 16(9) or 17(7)"; and

(b) by deleting the definition of the word "**entity**" and substituting the following definition —

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" "**entity**" means any body of the government (except the Cabinet) and includes any ministry, portfolio, statutory authority, government company or any other body which exercises a public function;".

Amendment of section 3 - National Conservation Council

3. The principal Act is amended in section 3 as follows —

(a) by repealing subsection (2) and substituting the following subsection —

"(2) The Council shall consist of the twelve members specified in Schedule 2";

(b) by repealing subsection (5);

(c) in subsection (9), by repealing paragraph (a); and

(d) by repealing subsection (13) and substituting the following subsection —

"(13)The Council may, with the approval of the Cabinet, and in accordance with Regulations made under this section, delegate to a person any of the powers conferred on it by this Act to the extent necessary to enable it to carry out its functions under this Act and to give effect to its decisions and —

(a) the delegation shall be in writing; and

(b) the Council, with the approval of the Cabinet or by the direction of Cabinet, by written notice to the person, at any time, may revoke any of the powers so delegated.".

Repeal and substitution of section 4 - advisory committees

4. The principal Act is amended by repealing section 4.

Amendment of section 6 - functions of the Director

5. The principal Act is amended in section 6(1) by repealing paragraph (b) and substituting the following paragraph —

"(b) act as secretary to the Council;".

Amendment of section 11 - protective measures

6. The principal Act is amended in section 11 by repealing subsection (4) and substituting the following subsections —

"(4) The Council shall, in writing, report the making of an interim directive under subsection (3) to the Minister within five working days after making the interim directive and the Minister shall submit the report to the Cabinet as soon as possible after receiving the report.

(5) Where the Council fails to report the making of an interim directive within the period specified in subsection (4), the interim directive ceases to have effect on the expiration of the period of five working

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days after the making of the interim directive, unless Cabinet determines otherwise.

(6) Notwithstanding subsection (4), an interim directive ceases to have effect on the commencement of a management plan for the protected area concerned, or at such earlier time as the Council or the Cabinet may direct.".

Amendment of section 16 - listing procedure

7. The principal Act is amended in section 16 by repealing subsection (10) and substituting the following subsections —

"(10) The Council shall, in writing, report the making of an interim directive under subsection (9) to the Minister within five working days after making the interim directive and the Minister shall submit the report to the Cabinet as soon as possible after receiving the report.

(11) Where the Council fails to report the making of an interim directive within the period specified in subsection (10), the interim directive ceases to have effect on the expiration of the period of five working days after the making of the interim directive unless Cabinet determines otherwise.

(12) Notwithstanding subsection (11), an interim directive ceases to have effect on the making of the order or at such earlier time as the Council or the Cabinet may direct.".

Amendment of section 17 - conservation plans

8. The principal Act is amended in section 17 by repealing subsection (8) and substituting the following subsections —

"(8) The Council shall, in writing, report the making of an interim directive under subsection (7) to the Minister within five working days after making the interim directive and the Minister shall submit the report to the Cabinet as soon as possible after receiving the report.

(8A) Where the Council fails to report the making of an interim directive within the period specified in subsection (8), the interim directive ceases to have effect on the expiration of the period of five working days after the making of the interim directive unless Cabinet determines otherwise.

(8B) Notwithstanding subsection (8A), an interim directive ceases to have effect on the adoption of a conservation plan for the species concerned or at such earlier time as the Council or the Cabinet may direct.".

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Amendment of section 27 - seizure of specimen by conservation officer

9. The principal Act is amended in section 27(5) by deleting the word "chairman" and substituting the word "chairperson".

Amendment of section 29 - compensation for loss arising upon exercise of powers of conservation officer

10. The principal Act is amended in section 29(3) by deleting the word "chairman" and substituting the word "chairperson".

Insertion of new sections- Conservation Appeals Tribunal; appeals against decisions of the Conservation Appeals Tribunal

11. The principal Act is amended by repealing section 39 and substituting the following sections —

"**Establishment of the Conservation Appeals Tribunal**

39. (1) There is established a tribunal known as the Conservation Appeals Tribunal which shall hear appeals, at the first instance, against certain decisions in accordance with this Act.

(2) Subject to the provisions of this Act, the Conservation Appeals Tribunal may regulate its own procedure.

(3) Schedule 2A shall apply for the purposes of this section and the Cabinet may amend Schedule 2A by Order.

Appeals to the Conservation Appeals Tribunal against decision of the Council

39A.(1) Subject to section 44, person aggrieved by a decision of the Council —

(a) refusing an application for a permit or a licence;

(b) imposing a condition on a permit or a licence;

(c) amending a permit or licence;

(d) revoking or suspending a permit or a licence;

(e) under section 41;

(f) under section 43; or

(g) to issue an interim directive under this Act,

may, within twenty-one days of the date on which notice of the decision is received, appeal against the decision to the Conservation Appeals Tribunal by serving on the Conservation Appeals Tribunal notice in writing of the intention to appeal and the grounds of the appeal.

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(2) A notice under this section shall —

(a) be in writing;

(b) provide particulars of the decision which the appellant wants to be reviewed;

(c) include any material or representation which the appellant wants to be taken into account in the review;

(d) provide an address to which notice should be sent; and

(e) be delivered to the office of the Conservation Appeals Tribunal and to the addresses of any other persons who have notified the aggrieved person that they have an interest in the appeal.

(3) A notice under subsection (2) can be delivered electronically.

(4) If an appeal is commenced against a decision of the Council, the decision and the matter to which the decision relates shall be of no effect while it is subject to the appeal.

(5) On the hearing of an appeal, the Conservation Appeals Tribunal may, having regard to the provisions of this Act and the public interest, confirm, vary or reverse the decision appealed against or exercise any other power that the Council could have exercised under this Act and the Conservation Appeals Tribunal shall give written reasons for its decision to the appellant.

(6) All notices under this section shall be effective and shall be considered received on the date of personal delivery or delivery by registered mail at the address of the Conservation Appeals Tribunal or to the other addresses if delivered during normal business hours on any day, and if not delivered during normal business hours, on the next business day following delivery.

(7) A notice given by electronic transmission shall be considered received on the next business day following the date of transmission.

(8) No fee or other charge is payable in respect of an appeal under this section.

Appeal against decisions of the Conservation Appeals Tribunal made under section 39A

39B.(1) Subject to section 44, a person aggrieved by a decision of the Conservation Appeals Tribunal under section 39A may, within twenty-one days of the date on which notice of the decision is received, appeal against it to the Cabinet by serving, on the Cabinet and the other parties who had given notice of their interest in accordance with section 39A, notice in writing of the intention to appeal and the grounds of the appeal.

(2) A notice under this section shall —

(a) be in writing;

(b) provide particulars of the decision which the appellant wants to be reviewed;

(c) include any material or representation which the appellant wants to be taken into account in the review;

(d) provide an address to which notice should be sent; and

(e) be delivered to the office of the Cabinet and to the addresses of the other persons who have provided notice of their interest under section 39A.

(3) A notice under subsection (2) can be delivered electronically.

(4) If an appeal is commenced against a decision of the Conservation Appeals Tribunal, the decision and the matter to which the decision relates shall be of no effect while it is subject to the appeal.

(5) On the hearing of an appeal, the Cabinet may, having regard to the provisions of this Act and the public interest, confirm, vary or reverse the decision appealed against or exercise any other power that the Council could have exercised under this Act and the Cabinet shall give reasons for its decision to the appellant.

(6) A person aggrieved by a decision of the Cabinet under subsection (3) may, within twenty-one days of the date on which notice of the written reasons for the decision was received, appeal to the court against the decision.

(7) All notices under this section shall be effective and shall be considered received on the date of personal delivery or delivery by registered mail at the office of the Cabinet and to the other addresses, if delivered during normal business hours on any day, and if not delivered during normal business hours, on the next business day following delivery.

(8) A notice given by electronic transmission shall be considered received on the next business day following the date of transmission.

(9) No fee or other charge is payable in respect of an appeal to the Cabinet under this section.”.

Repeal and substitution of section 41 - general obligations

12. The principal Act is amended by repealing section 41 and substituting the following section —

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"**General obligations**

41. (1) Subject to subsections (2), (3) and (4), every entity shall comply with this Act and shall ensure that its decisions, actions and undertakings are consistent with and do not jeopardise the protection and conservation of a protected area or any protected species or its critical habitat as established pursuant to this Act.

(2) For the purposes of subsection (1) the Council shall formulate and issue guidance notes to other entities on their duties under this Act.

(3) Every entity shall, taking into account any guidance notes issued by the Council and regulations made under this Act —

(a) consult with the Council in relation to any action that entity proposes to take, including —

(i) the grant of any permit or licence; and

(ii) the making of any decision or the giving of any undertaking or approval,

that the entity considers would or would be likely to have an adverse effect on the environment generally or on any natural resource; and

(b) take into account any views of the Council before taking that action.

(4) Every entity, after taking into account guidance notes issued by the Council and regulations made under this Act, shall consult with the Council in respect of any action it proposes to take, including —

(a) the grant of a permit or licence; and

(b) the making of a decision or the giving of an undertaking or approval

that the entity considers would or would be likely to have an adverse effect, whether directly or indirectly, on a protected area or on the critical habitat of a protected species.

(5) In the case of a proposed action to which subsection (4) applies, the Council may, having regard to all the material considerations in this Act and regulations made under this Act —

(a) recommend that the proposed action be made subject to any conditions as it considers reasonable; or

(b) if the Council considers that the adverse impact of the proposed action cannot be satisfactorily mitigated by conditions, the Council shall recommend that the proposed action should not proceed.

(6) Where the Council makes a recommendation pursuant to subsection (5) —

(a) the entity shall comply with that recommendation unless it considers that there are good reasons not to do so; and

(b) if the entity decides not to comply with the Council's recommendation, it shall notify the Council of the reasons for its decision.

(7) A person aggrieved by a decision of an entity under subsection (6) may appeal against the decision to the Conservation Appeals Tribunal and, if necessary to the Cabinet thereafter, and the procedures set out under sections 39A and 39B shall apply to such appeal, with any necessary changes.

(8) If a decision of an entity is subject to appeal in accordance with section 7, the decision shall not be of effect while it is subject to appeal.

(9) The Council may, where it is aggrieved by a decision of another entity under section (6)(b), appeal against the decision in accordance with section 39B.

(10) In subsections (2) to (9) the word "**entity**" does not include the Council.".

Insertion of new section 41A - appeals by the Council against a decision of an entity

13. The principal Act is amended by inserting after section 41 the following section —

"**Appeals by the Council against a decision of an entity**

41A.(1) Where the Council is aggrieved by a decision of an entity made under section 41(6)(b) it may, within twenty-one days of the date on which notice of the decision of the entity is received, appeal against the decision to the Conservation Appeals Tribunal, and, if necessary, to the Cabinet thereafter.

(2) If a decision of an entity is subject to appeal, the decision of the entity shall not be of effect while it is subject to appeal.

(3) Subject to section 44, the procedures set out in section 39A and 39B shall apply to an appeal by the Council under this section, with any necessary changes.".

Amendment of section 43 - environmental impact assessment

14. The principal Act is amended in section 43 by repealing subsection (1) and substituting the following subsection —

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"(1) In any consultations pursuant to section 41(3), or upon receiving any request for approval under section 41(4), the Council may, in its discretion and within such times as it may specify, require an environmental impact assessment to be carried out for the proposed action.".

Repeal and substitution of section 44 - judicial review

15. The principal Act is amended by repealing section 44 and substituting the following section —

"**Legal proceedings**

44. No steps may be taken by an entity nor by a public officer to institute civil proceedings in any court in connection with matters arising out of the discharge of their public duties or against any entity or public officer for anything done in the performance of their duties under this Act unless the approval of the Attorney General had been obtained.".

Repeal and substitution of section 46 - Environmental Protection Fund

16. The principal Act is amended by repealing section 46 and substituting the following section —

"**Environmental Protection Fund**

46. (1) There continues to be established an environmental protection fund which is used for the following purposes —

(a) the acquisition and management of protected areas;

(b) the acquisition of land for conservation and similar purposes; and

(c) the provision of measures to protect and conserve protected species and their critical habitat,

pursuant to an appropriation in accordance with the *Public Management and Finance Act (2020 Revision).*

(2) The Cabinet shall be responsible for the management of the Fund including the management of monies disbursed from the Fund to carry out any of the activities required to give effect to the purposes of the Fund.

(3) The Minister responsible for Finance shall provide to the Parliament during the budget process, at the start of appropriation proceedings, a statement which details, among other things, the following —

(a) the amount of expenditure to be incurred by the Government in the budget period for the purpose of protecting and preserving the environment; and

(b) the amounts of monies which are to be appropriated for the Fund, and to be taken from the Fund, if any, to finance the expenditure to be incurred as specified in paragraph (a).

(4) The Fund shall continue to be accounted for as a restricted reserve in the financial statements of the core government in accordance with the *Public Management and Finance Act (2020 Revision).*

(5) The following executive revenue shall, upon being earned by the Government, be paid into the Fund —

(a) one hundred per cent of the environmental protection fee collected under section 6 of the *Travel (Departure Tax and Environmental Protection Fee) Act (2003 Revision);* and

(b) one hundred per cent per cent of all fees paid under this Act and any fines, compensation and costs imposed in respect of offences under this Act.

(6) The Cabinet may, by Regulations, amend subsection (5).

(7) Regulations made under subsection (6) are subject to the affirmative resolution of the Parliament.

(8) Voluntary contributions or grants by individuals or organisations paid to Government for the benefit of environmental protection may be paid into the Fund.

(9) The Government may make additional appropriations to the Fund from the revenue, borrowings or other funds of the Government in accordance with the *Public Management and Finance Act (2020 Revision).*

(10) The Cabinet shall enter into agreements with the Department of the Environment, other entities, non-governmental organisations or other persons to carry out any of the activities required to give effect to the purposes of the Fund.

(11) Payment for activities specified under subsection (10) shall be made by the Cabinet.

(12) The Cabinet shall periodically review the activities of the Fund and the result of these reviews shall be included in an annual report of the Ministry responsible for Finance.".

Repeal of section 47 - management of the Fund

17. The principal Act is amended by repealing section 47.

Amendment of Schedule 2 - composition of the Council

18. The principal Act is amended in Schedule 2 as follows —

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(a) by deleting the word "chairman" wherever it appears and substituting the word "chairperson"; and

(b) by repealing paragraphs 1 and 2 and substituting the following paragraphs —

"1. (1) The Council shall consist of the following members —

(a) the following members who shall not have a right to vote —

(i) the Director or the Director's nominee from the Department of the Environment;

(ii) the Deputy Director of Research in the Department of the Environment;

(iii) the Chief Officer of the Ministry responsible for agriculture or the nominee of the Chief Officer; and

(iv) the Chief Officer of the Ministry responsible for planning or the nominee of the Chief Officer; and

(b) the following members appointed by the Cabinet who shall have the right to vote —

(i) a person appointed to be chairperson;

(ii) a person whom shall be nominated by the National Trust; and

(iii) one person from each of the following districts —

(A) West Bay;

(B) George Town;

(C) Cayman Brac and Little Cayman;

(D) Bodden Town;

(E) North Side; and

(F) East End.

2. At a meeting of the Council, if the chairperson is not present, a member chosen by the members present, shall act as the chairperson of the meeting.".

Insertion of new Schedule 2A - Conservation Appeals Tribunal

19. The principal Act is amended by inserting after Schedule 2 the following Schedule —

"SCHEDULE 2A

Conservation Appeals Tribunal

1. The Conservation Appeals Body shall consist of the following members appointed by the Cabinet —
   (a) a person appointed to be chairperson; and
   (b) one person from each of the following districts —
      (i) West Bay;
      (ii) George Town;
      (iii) Cayman Brac and Little Cayman;
      (iv) Bodden Town;
      (v) North Side; and
      (vi) East End.
2. The Cabinet shall appoint a public officer to be secretary to the Tribunal
3. The members appointed to the Conservation Appeals Tribunal shall hold office for two years and be eligible for re-appointment.
4. Four members of the Conservation Appeals Tribunal constitute a quorum.
5. The decisions of the Conservation Appeals Tribunal shall be by simple majority and the chairperson shall have a casting vote only.
6. At a meeting of the Conservation Appeals Tribunal, if the chairperson is not present, a member chosen by the members present, shall act as the chairperson of the meeting.
7. (1) If an appointed member is absent or unable to act, Cabinet may appoint another person to act in the place of that member.
   (2) An acting member appointed under this paragraph has the powers, duties and entitlements of a member.
8. A member may at any time resign office by letter addressed to the chairperson and from the date of receipt by the chairperson of the letter, that person shall cease to be a member of the Conservation Appeals Tribunal.
9. The Cabinet may revoke the membership of any member.
10. If a vacancy occurs in the membership that vacancy shall be filled by the appointment of another member by the Cabinet.
11. The Clerk of Cabinet shall cause the names of all members of the Conservation Appeals Tribunal as first constituted and every subsequent change to the membership to be published in the Gazette.

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12. (1) If a member of the Conservation Appeals Tribunal has any pecuniary or other interest in any matter to be dealt with by the Conservation Appeals Tribunal the member shall disclose the fact to the chairperson and shall not take part in any meeting at which the matter is considered or discussed.

(2) A member of the Conservation Appeals Tribunal who fails to comply with subparagraph (1) commits an offence and is liable —

(a) on summary conviction to a fine of twenty thousand dollars and to imprisonment for two years; or

(b) on conviction on indictment to a fine of fifty thousand dollars and to imprisonment for five years, unless the member proves that he or she did not know that matter in which he or she had an interest was the subject of consideration at that meeting.

(3) A disclosure under subparagraph (1) shall be recorded in the minutes of the meeting of the Conservation Appeals Tribunal.

13. Members shall be paid such allowances as the Cabinet may determine.

14. Allowances and administrative expenses incurred by the Conservation Appeals Tribunal in carrying out its functions under this Act shall be paid out of the general revenue of the Islands.".

Transitional provisions

20. Every appeal to the Cabinet and the court commenced under the principal Act and not determined at the date of the commencement of this amending Act shall be continued and completed as if this amending Act is not in force.

Passed by the Parliament the day of , 2024.

Speaker

Clerk of the Parliament