

National Land Development and Government Real Property



Cayman Islands Department of Tourism



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EXECUTIVE SUMMARY

The management of the development of the Cayman Islands is one of the most important functions of the Government. With significant growth in its population over the last 15 years of over 40%, the Government has had to deal with significant challenges to ensure that development is well managed. Looking ahead, the Government faces a number of significant infrastructure projects using innovative financing in the wake of a scarcity of funds. The ability for Government to play an effective role in this important area will continue to be critical to the future of the Cayman Islands.

The objective of the audit was to determine whether the Cayman Islands Government is adequately managing land use and development to meet government objectives, both for the Cayman Islands in general and also for Crown Lands in particular.

We found that the framework for the management of development and land in the Cayman Islands established in the *Development and Planning Law* is neither comprehensive nor up-to-date. The Law requires the Central Planning Authority carry out a “fresh survey” every five years and submit a report to the Legislative Assembly with proposals for alterations or additions to the plan. This was last done in 1997. The failure to update the plan has had negative effects:

- initiative for development has passed from the Legislative Assembly to the private sector. The two largest developments undertaken in the last five years – the NRA Agreement and Health City – were not guided by the Development Plan. There is no evidence that the NRA Agreement was ever assessed against the Development Plan. The Central Planning Authority used the Plan in a cursory manner to assess the Health City proposal, but the Department of Environment stated it was obsolete and did not use it. Other responding agencies did not refer to the Plan in their assessments;
- although the Development Plan 1997 states that environmental protection is a policy objective, actual development decisions have overridden this goal. Sixty-nine percent of the west side Cayman Islands wetlands were lost between 1976 and 2013 with 11 percent lost between 2004 and 2013. Areas identified as sensitive in the Vision 2008 report have been developed;
- the strategy of the Development Plan 1997 to encourage conservation of fresh water supplies, develop new sources of supply and provide for effective drainage and prevention of pollution has not been fully supported. The Water Authority and the Central Planning Authority do not agree on the allowable depth for quarries, resulting in the override of the judgment of the technical authority. Storm water management is increasingly problematic as wetlands have been eliminated. The National Roads Authority has become involved, but regards storm water management other than for road protection as outside its mandate.

The Development Plan 1997 is further limited by lacking zoning regulations for the Sister Islands. In addition, oceanic and seabed resources are outside the *Development and Planning Law*. Cabinet is responsible for Coastal Works licenses. This divides responsibility for developments that cross the high water mark and involves the politicians in operational decision making, inconsistent with their policy-only role defined in the *Public Management and Finance Law*.

Decisions regarding land use are not always transparent. The Central Planning Authority and the Development Control Board publish submissions made to them, but their deliberations are not open to the public and objections or recommendations by technical authorities such as the Water Authority are often overruled or ignored without explanation. The NRA Agreement and the Health City Agreement were negotiated outside the normal planning process in secret by Ministers with no public disclosure until after the Government had committed to them.

The Government can improve the management of its own real property portfolio. The Lands and Survey Department undertook its first revaluation of property since 2001 in 2012, ensuring that government's property inventory is complete and accurate. Recently completed financial audits have indicated that the Government has room to improve the completeness and accuracy of elements of its property inventory. We found, moreover, that the Valuation and Estates Office determined that the Government owns 279 properties valued at CI\$60 million not required for operations. The Government has recently put a process in place to review holdings and to dispose of surplus properties.

The governance framework for the Cayman Islands has not been respected in the approval and management of major developments. The governance framework for government expenditure requires that Ministers set objectives and policy, but do not become involved in selection of means or in operational implementation. Moreover, all activity and expenditure must be approved by the Legislative Assembly.

In the case of the NRA Agreement, the contract was negotiated by Ministers without the knowledge or assistance of civil servants and presented to them in a detailed agreement drawn up by Dart Realty (Company) Ltd. (DRCL) which had legal obligations they were required to implement with little time for analysis or revision. The Ministers were acting outside their roles in the governance framework. In addition, although a highway was acquired, land disposed of and extensive tax and duty concessions made, no approval was sought from the Legislative Assembly as required by the PMFL. In the case of Health City, the agreement was negotiated by Ministers. It was presented to Cabinet together with input from the Ministry commenting on the terms of agreement. Although there was input from the civil service, Ministers acted outside their legal roles by becoming involved in the selection of means. Again, no approval from the Legislative Assembly was sought, even though the agreement committed government to hundreds of millions of dollars in tax, duty and fee concessions and contained obligations for infrastructure upgrading and expenditure.

I conclude that in both cases the Government acted unlawfully and without proper authority in signing these agreements.

The Government did not conduct adequate value for money analysis for either the NRA Agreement or the Health City agreement. In the case of the NRA Agreement this has resulted in the Government's refusal to honour the Hotel Tax Rebate obtained by the developer who now claims the Government is in material breach of the agreement, raising the risk of a suit for damages. In the case of Health City, the Government could come under pressure to provide infrastructure it cannot afford.

These major development projects underline weaknesses in the Government's framework for the management of Public Private Partnerships (PPP's). Although the Framework for Fiscal Responsibility provides a basic structure for PPP's, the Government lacks the detailed policies or procedures for its successful implementation.

As the work conducted on this audit was effectively completed in the fall of 2014, we updated some of the areas reviewed closer to the time of issuance. In reviewing the NRA Agreement, we found that the role of the Minister still needs to be more formalized in light of the legislative framework in place and the roles outlined therein. We also followed up on Government's management of PPP's and were informed that they will be creating centralized procurement and major capital project offices. While we didn't review the extent to which their operations are now in place, we acknowledge that these developments should strengthen the Government's management of national development in the future.

BACKGROUND

WHY DID WE DO THIS AUDIT?

1. The management of the development of the Cayman Islands is an important function of the Government. How well development is managed affects the economic well-being of citizens, the health of the environment and the preservation of Islands' culture. Over the last 15 years the population of the Cayman Islands has grown from about 39,000 in 1999 to over 55,000 today, or over 40 per cent. This has created both economic and ecological challenges for the Government. Private sector development has become increasingly larger in scale, increasing both its impact and risks if not adequately planned. Moreover, the Government is facing an increasing backlog of major infrastructure projects. These include the George Town cruise berthing facility, the airport, major roads, schools and hospitals. All these developments must be integrated for the islands to function at their potential.
2. The Cayman Islands Government is still operating under financial constraints and is unable to finance much of its needed infrastructure requirements from its revenues or through debt. It has therefore turned to new ways of financing projects through land swaps, tax concessions and "public private partnerships" or PPP's. The Framework for Fiscal Responsibility which the Government signed with the United Kingdom Government in November 2011 committed the Cayman Islands Government to the principles of effective medium-term planning to ensure the full impact of fiscal decisions is understood, putting affordability, value for money, the effective management of risk, and delivering improved accountability in all its operations. The Framework also established principles for entering into and managing PPP's.
3. As well as being responsible for the governance of development throughout the islands, the Government is also a major landowner. In 2012 Lands and Surveys listed about 575 Crown-owned parcels of land. The Government leases about 80 to 90 properties from the private sector and in turn leases out about 80 government properties. The management of the Crown estate is an important function of the Government.

LAND USE

4. The Government of the Cayman Islands has two major responsibilities for land management: the responsibility for land management and development in the country generally, and the management of property owned by the Government itself. Our report will address both issues in separate sections.
5. The United Kingdom has a role in the governance of Cayman Islands national land management, although it has consistently sought to minimize the nature and extent of its responsibility and clearly expects the Cayman Islands Government to establish its own land management regime. The United Kingdom is now principally involved through foreign policy initiatives including the UN Convention on Biological Diversity (1992) which committed the Cayman Islands to developing strategies for the conservation and sustainable use of biological diversity and the *UN Convention on the Law of the Sea (UNCLOS)* which between 1964 and 1994 defined the territorial waters of the Cayman Islands and its Exclusive Economic Zone. The United Kingdom has also indirectly affected land management through governance agreements such as the Framework for Fiscal Responsibility. Finally, under the *Governor (Vesting of Lands) Law (2005 Revision)*, the Governor must approve the sale of any government owned land.
6. Several agencies and departments share the Cayman Islands Government's responsibilities for land and development management. Chief among these are the Central Planning Authority (CPA) on Grand Cayman and the Development Control Board (DCB) on Cayman Brac and Little Cayman. The CPA is the statutory body appointed by Cabinet to oversee and review the physical development of Grand Cayman. The Development Control Board has a similar role and its functions are directed by the appendices to the Development Plan 1997. The CPA and DCB are supported by the Department of Planning whose duties include: policy preparation, including land use policies and maintaining the currency of the Development Plan; processing development applications for all levels of works from signage to major industrial complexes; and, reviewing building permits and conducting inspections on the structural, plumbing, mechanical and electrical components of structures to determine compliance to applicable codes.
7. Other agencies with responsibility for land management include:
 - a. **National Roads Authority.** The National Roads Authority (NRA) is responsible to administer, manage, control, develop and maintain the Islands' public roads and related facilities such as signals, storm water facilities, roadway lighting and directional signage. The NRA is charged with forecasting traffic demand and identifying solutions to anticipated problems. The *NRA Law* and *the Roads Law (2005)* give the NRA independent statutory authority to build and

- discontinue the use of roads and to recommend the acquisition of land for roads to the Governor.
- b. **Water Authority.** The Water Authority is charged with the framing and execution of a comprehensive policy with respect to the development, augmentation, conservation and best use of water resources.
 - c. **National Conservation Council and the Department of the Environment.** Established by the *National Conservation Law (2013)* the National Conservation Council (NCC) will be empowered when the Law is in force to coordinate the establishment and adoption by the public and private sectors of national policies for the conservation and sustainable use of natural resources. It will recommend and maintain protected areas and conservation areas, and promote national plans for sustainable management of sinks and reservoirs of greenhouse gases. The Department of the Environment (DOE) will advise and support the Council and administer and enforce the provisions of the Law. Until the Law is proclaimed the Department of the Environment functions mostly in an advisory capacity.
 - d. **Lands and Survey Department.** The Lands and Survey Department (L&S) provides essential infrastructure for land management through the provision of survey, land registration and mapping services. L&S thus provides the underpinnings for land ownership in the Islands.
8. Below the high water mark, the management regime is completely different from that on land. Most of the Crown Land owned by the Cayman Islands is not terrestrial, but is the ocean offshore. Through UNCLOS, the Cayman Islands have a contiguous zone of 22 km in which Caymanian customs, immigration, taxation and pollution laws apply. In addition, the Islands have an exclusive economic zone of 370 km in which they have the sole right to exploit natural resources. Cabinet is directly responsible for Crown Lands below the high water mark and gives approval for Coastal Works Licenses. The DOE and the Planning Department only play an advisory role.

MANAGEMENT OF CROWN LANDS

9. The second major responsibility of the Government is the management of land it owns, the Crown Lands. Individual agencies determine, subject to Cabinet approval, what property is needed and what property should be bought, sold or leased. However, the administration of Crown property is centralized. The Valuation and Estates Office of the Lands and Survey Department maintains the Crown Register, checks for encroachments, and collects rent. The Valuation and Estates Office also plays the key role of valuation of any property bought or sold by core government and undertakes the negotiation of purchases and sales on behalf of the core government user agencies.
10. We were informed that the Facilities Management office manages several town halls and civic centres on Grand Cayman directly. There are about ten agencies that have authority to manage their own real property, including the Airports Authority, the Ports Authority and the Health Services Authority.

ABOUT THE AUDIT

11. The objective of the audit was to determine whether the Cayman Islands Government is adequately managing land use and development to meet government objectives, both for the Cayman Islands in general and also for Crown Lands in particular.
12. We reviewed the Government's framework for land use planning and development to determine whether:
 - there was an adequate legal and administrative structure to manage land use and development in a comprehensive and consistent manner;
 - decisions regarding land use are transparent;
 - there is compliance with the principles of selflessness, integrity, objectivity, accountability and openness;
 - plans and decisions adequately take into account environmentally sensitive and culturally significant properties; and
 - the integrity of planning and policy is maintained by adequate enforcement action.
13. For Crown properties we reviewed the Government's framework to determine whether there was an adequate asset management system in place for real property. We reviewed inventories to determine if properties not required for program requirements were retained and whether agencies managed properties to achieve the highest and best use of them. We assessed whether acquisition and disposal transactions had been publicised, and open to competition and without undue influence from any party. We relied on financial audits conducted by the Office of the Auditor General to assess the completeness and accuracy of the Government's inventory and value of its properties.
14. We also reviewed the framework in place for the management of Public Private Partnerships (PPP's). We reviewed two cases to determine whether they had been developed in an open and competitive process to the extent possible, whether the rationale for directed contracting was well-documented and made public, and whether government staff assigned to negotiate and oversee PPP's were adequately qualified.
15. As well as conducting a general review of management systems and sampling transactions we carried out in-depth case studies of the NRA Agreement, the Health City and South Sound (Emerald Sound and Adagio Development). More information "About the Audit" including the scope and the criteria can be found in Appendix 1.

FINDINGS

25. This report presents its findings in three sections: governance and planning, management of real property and development and expenditure management. The governance and planning section examines the overall framework for national land use planning in the Cayman Islands, including the work of the Central Planning Authority, the Development Control Board and the Department of Planning. The second section – management of government real property – addresses how the Government manages the property it owns and uses and assesses how well the Government exercises its stewardship of its real property assets. The final section on development and expenditure management, describes the governance framework of the Cayman Island Government established by the *Public Management and Finance Law*, the *Constitution Order 2009*, and the Framework for Fiscal Responsibility and assesses whether recent major developments have been conducted in compliance with the legal framework and whether the Government has achieved value for money in its expenditures to support development. The NRA Agreement and Health City are discussed as examples.
26. The report also includes a recent events section as the main audit examination work took place between February and August 2014 and the Government has continued to renegotiate the NRA Agreement and has made other administrative changes after we completed our work. In this section we assess the degree to which recent government actions affect our findings and recommendations.

GOVERNANCE AND PLANNING

THE FRAMEWORK FOR DEVELOPMENT AND LAND MANAGEMENT IS NEITHER COMPREHENSIVE NOR UP-TO-DATE

27. The framework for development and land management in the Cayman Islands is established in the *Development and Planning Law*. This Law establishes the Central Planning Authority (CPA) for Grand Cayman and the Development Control Board (DCB) for Little Cayman and Cayman Brac. Appointed by the Governor, these boards are to “*secure consistency and continuity in the framing and execution of a comprehensive policy approved by the Executive Cabinet with respect to the use and development of land in the Islands . . . in accordance with the development plan for the Islands. . . The development plan is to define the sites of roads, public and other buildings and works, airfields, parks, pleasure ground, nature reserves and open spaces and is to allocate areas of land for agricultural, residential, industrial or other use.*”
28. The Law requires that “at least once in every five years” after the approval of a development plan by the Legislative Assembly that the CPA carry out “a fresh survey of that area” and submit a report to the Legislative Assembly a report of the survey with proposals for alternations or additions to the plan. The current development plan dates from 1997.
29. The Development Plan, 1997 states high-level goals such as “*to maintain and enhance the Cayman Islands and the well-being and prosperity of its people subject thereto its environmental character*” and “*to provide for and encourage better coordination and co-operation among all interested entities, be they private or public.*” It does not, however, provide detail as to how this is to be achieved or how priorities among its “strategies” are to be ordered or balanced. For example, one strategy is “*to maintain and encourage the further development of the tourist and financial industries*” but another is to “*preserve the natural assets of the Island for their value in protection from the elements and their natural beauty.*” Priorities can only be inferred from the actual zoning maps that form part of the plan. It is therefore not possible to determine whether the objectives of the Development Plan, 1997 have been met or not.
30. As already noted, although the *Development and Planning Law* requires a “fresh survey” for every area for which a development plan has been approved be carried out and submitted to the Legislative Assembly every five years, no comprehensive plan has been completed since 1997.

31. A significant attempt at renewing national development and land planning was made during the Vision 2008 project. This project was initiated by the Governor in 1998 and headed by the Minister of Education, Aviation and Planning. It involved more than 2,000 people through a polling process, retreats conducted with members of the Executive Council, members of the Legislative Assembly, senior civil servants and the public. Its scope included social and economic planning as well as land use. It contained many specifics in terms of outputs and objectives being sought and it made recommendations regarding improvements for the management of growth. It was not, however, an official, comprehensive plan.
32. In 2011, the Public Service Review concluded that while the *Development and Planning Law* required the plan to be updated every five years, this had not been done and that outdated plans were “significant barriers” to the efficient operation of the Planning Department. It found it “totally inappropriate” that a country so dependent on development should rely on such an outdated regulatory and legal framework. The Public Service Review noted the political risk and difficulty in developing a plan for the entire island of Grand Cayman at one time and agreed with a Department recommendation that a series of area plans be undertaken. As means to bridge the earlier noted difficulties inherent in developing a plan to guide development for the entire island, the Planning Department has drafted proposals to undertake a number of area plans, but have informed us that budgetary constraints have prevented officials from implementing these proposals.
33. We reviewed 34 rezoning applications made since 2004. We found that not only was their scope piecemeal, as might be expected, but also that the process itself was problematic. Twenty of the 34 applications had not reached a decision. The oldest had been outstanding for almost nine and a half years and, on average, applications for which no decision had been reached were more than four years old. We therefore conclude that rezones cannot be considered to be a substitute for comprehensive development and land use planning.
34. There are other important limitations to the framework for development and land use. The Sister Islands are not covered by the zoning regulations included in the Development Plan 1997. The plan contains only “guidelines” for Cayman Brac and Little Cayman. In addition, oceanic and seabed resources are outside the *Development and Planning Law*. We did not find any agency responsible for the management of territory below the high water mark. Cabinet is responsible for the approval of Coastal Works Licenses. This creates a division of responsibility for developments that include land both above and below the high water mark. It also involves the political level in operational decision-making which is inconsistent with the *Public Management and Finance Law* which otherwise segregates policy and operational management. The existing regime therefore does not adequately address either the overall planning and management of the offshore or the management of government property below the high water mark.
35. In the case of the South Sound development reviewed, the CPA approved a major subdivision and canal for which the applicant would require the grant of a coastal works license prior to connecting

the canal to the sea. In doing so, the CPA ignored a previous recommendation from the Department of Environment to Cabinet that a Coastal Works License for the development be denied. It would appear that the CPA acted within its legislative authority in making this decision; however it underlines the fragmented and uncoordinated nature of the process. According to Planning officials, the CPA believes that government agencies often do not adequately substantiate their recommendations to the CPA. We note that the CPA has no standards that agencies can use to assess the adequacy of their submissions.

36. Other agencies involved in development and land use planning also suffer from deficiencies. The National Roads Authorities Master Ground Transportation Plan dates from 1988. The *National Conservation Law* was given Royal assent 22 January 2014. Cabinet has only recently brought certain parts of the Law into effect. Provisions requiring Environmental Impact Assessments are currently being developed.
37. Negative outcomes resulting from the failure to maintain a comprehensive and up-to-date development and land management framework include loss of control by the Legislative Assembly required by the statutes, unreasonable environmental degradation, and water management problems.

LOSS OF DEVELOPMENT CONTROL BY THE LEGISLATIVE ASSEMBLY

38. The governance framework for development and land management for the Cayman Islands places the central policy-making authority in the hands of the Legislative Assembly which must approve all development plans. The failure of governments to maintain the currency of development plans may have led to the impression that this important government responsibility has been allowed to pass to the private sector. We found that the two largest developments undertaken in the last five years – the NRA Agreement and Health City – were pursued outside the context of an up-to-date national land use plan.
39. There is no evidence that either “For Cayman Investment Alliance Plan” or the NRA Agreement which was developed from it were assessed against a current development plan. While the CPA employed the Development Plan 1997 in its assessment of the Health City proposal, this was cursory at best. The plan did not provide any direction or guidance regarding priorities for the CPA to use in making planning approval decisions. The Department of Environment stated the plan was obsolete in its submission on the Health City proposal and explicitly did not use it. The other responding agencies did not refer to the plan at all in their submissions.
40. In the absence of a current development plan, we conclude that guidance from the Legislative Assembly is no longer steering major development decisions.

ENVIRONMENTAL DEGRADATION

41. Although the Development Plan 1997 states that environmental protection is a policy objective, actual development decisions have overridden these goals. For example, there has been continued wetland loss. In 1976, the west side of Grand Cayman had about 5,300 acres of wetland. By 2013, 69 per cent of this wetland had been lost with 11 per cent of the loss between 2004 and 2013. Below, in Exhibits 1 through 3 are maps of the west side of Grand Cayman that illustrate the loss of wetlands in this part of the island alone.
42. We reviewed the Vision 2008 report which, although not an approved development plan, has been the major planning effort undertaken by the Government subsequent to the 1997 plan. We found that out of 195 specific parcels of land identified as sensitive in that report 23 have been developed, 8 have been affected by roads or easements, 37 are part of larger parcels under development and another 23 are affected by requests for development approval. These include:
- Denis Point Pond, a sensitive area recommended for improvements to biodiversity has been degazetted as Crown land and is subject to a Coastal Works Application and a Planning Application for the extraction of aggregates and the creation of a marina;
 - Booby Pond, recommended for development as a nature preserve has been so protected, but part of the identified area has been developed;
 - the Central Mangrove Wetland of Grand Cayman was recommended for preservation but as noted has been subject to continued loss;
 - Cabinet has granted approval for a Coastal Works License for the excavation of an off-shore boat channel in North Sound which is connected to a substantial land-based development. Vision 2008 recommended that North Sound be protected from further environmental degradation. In spite of a subsequent report recommending the prohibition of dredging in North Sound, dredging and excavations have been approved.

Exhibit 1: Wetland loss – 1994

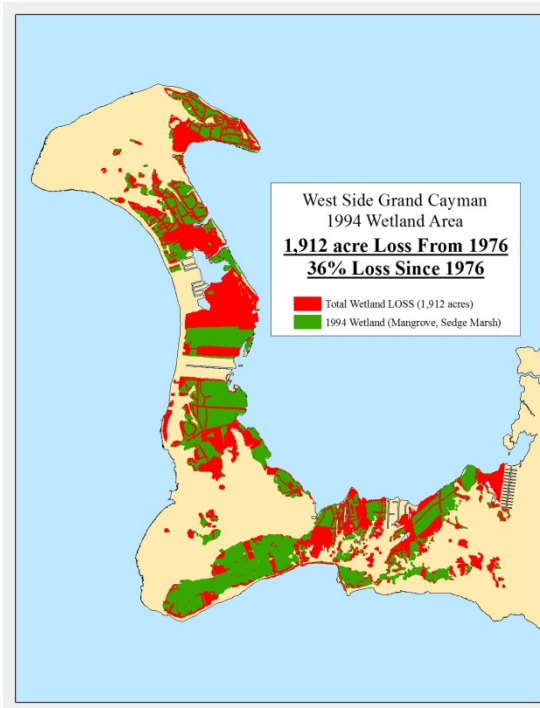


Exhibit 2: Wetland loss - 2004

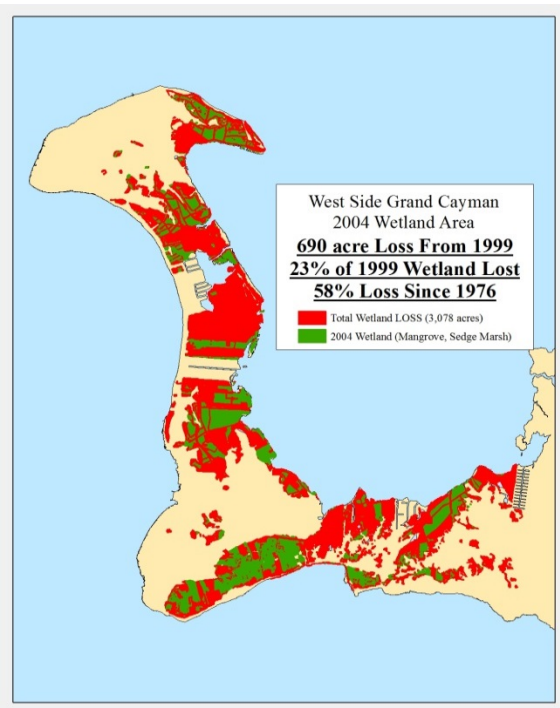
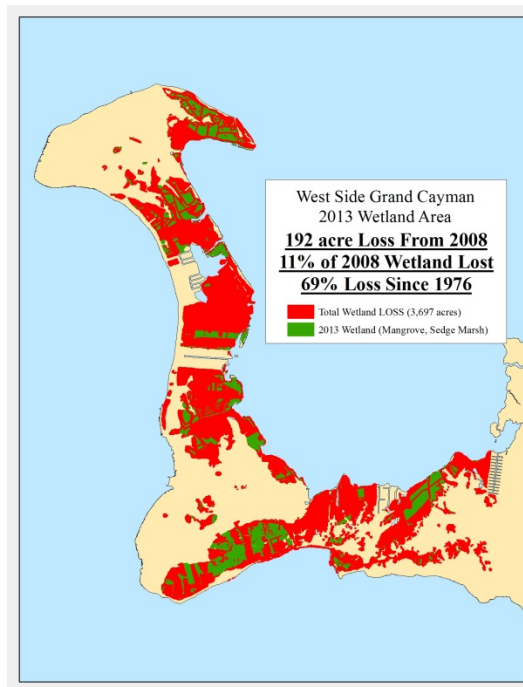


Exhibit 3: Wetland loss - 2013



Source: Department of Environment

43. The Esterley Tibbets Highway Extension (“ETH”) was built as part of the NRA Agreement without an Environment Impact Assessment on the rationale that the route had not been changed substantially from that in the 1988 Master Ground Transportation Plan. A major highway would normally be subject to an Environmental Impact Assessment. Moreover, the ETH Extension includes an overpass, apparently to accommodate a canal. No environmental assessment for a canal has been undertaken.
44. Finally, the United Kingdom House of Commons Environmental Audit Committee in 2012 assessed development controls in the Cayman Islands as “weak.” Its report was critical of the Cayman Islands Government failure to use its Environmental Protection Fund for its intended purpose, and instead using it as a cash reserve to meet financial management goals.

WATER MANAGEMENT HAS WEAKENED

45. One of the strategies of the Development Plan 1997 was to encourage the necessary conservation of fresh water supplies and the development of new sources of supply and distribution together with measures for effective drainage and avoidance of pollution. We found that the governance framework for development and land management has not fully supported this objective. According to officials, “*informal housing*” has proliferated. These unapproved structures and additions to buildings have resulted in improper disposal of sewage and sewage escaping to other properties. As enforcement action must be taken within three years of construction, time has often lapsed when agencies discover nonconforming structures. Officials also complained of poor coordination among the responsible agencies. Officials told us that the Government intends to establish a multi-ministry committee to address this issue.
46. Quarries are another issue area which puts ground water at risk. The Water Authority and the CPA do not appear to agree on the allowable depth for quarries. Even though the Water Authority has the technical expertise to assess the requirements and the mandate to protect the water supply, the *Development and Planning Law* leaves the decision to the CPA which often agrees to developer requests for deeper excavation than the Water Authority thinks prudent. We were informed that CPA decisions used to formally require applicants to conform to Water Authority regulations, it often no longer does this as we were informed that the CPA has determined that the best and most expedient course of action is for these matters to be dealt with under the Water Authority Regulations, and not attached as a condition of planning permission. Planning officials indicated to us that this practice, if continued, would result in the CPA seeking to enforce the requirements of another statutory agency’s legislation without an appropriate legal mandate to do so.

47. Storm water management has become increasingly problematic. The development of wetlands has meant that a lot of the natural storage areas for storm water have been eliminated. Continuing building and development causes storm water to migrate to older, lower developments. The National Roads Authority has taken up advising on storm water management, but its officials do not believe that this is part of its mandate, other than to protect roads and suggest more comprehensive policies and plans are required.
48. In our opinion the Government has not met the requirements of the *Development and Planning Law* of revision and up-dating every five years. The 1997 plan is out of date and is no longer a useful guidance document to officials. Piecemeal, ad hoc revision to the plan has been ineffective. The omission of the offshore from the development and planning structure is a significant gap. There have been numerous adverse consequences as the Legislative Assembly no longer has effective control of the development process, environmental degradation has occurred and risk to ground flooding has increased.

Recommendation #1: The Development Plan for the Cayman Islands should be comprehensively updated. The area approach suggested by the Public Service Review is worthy of consideration as an approach to this task.

Recommendation #2: The Crown Lands below the high water mark should be included in national development plans and that:

- **Cabinet be removed from day-to-day operational decision-making;**
- **a specific agency be made responsible for long range planning of off-shore development; and**
- **the CPA's discretion should be exercised in conformance with national policy, land use plans and advice from the Department of Environment.**

DECISIONS REGARDING DEVELOPMENT ARE NOT ALWAYS TRANSPARENT

49. We assessed whether development and land use decisions conformed to the United Kingdom Standards in Public Life and the *Cayman Islands Standards in Public Life Law, 2014*. The law in the Cayman Islands was given Royal assent 21 February 2014 but is not yet in effect. Nevertheless, these standards represent good practice. In particular, we reviewed a judgment sample of 17 applications to the Central Planning Authority made in the last 3 years and similar sample of 9 applications to the Development Control Board. We also reviewed three major developments as case studies. We examined these applications to determine whether:

- decisions regarding land use were open to public scrutiny;
- decision-makers provided reasons for their decisions, restricting information only when wider public interest clearly demands; and
- decision-makers are, and are seen to be, free of conflicts of interest.

50. We found that decisions regarding land use were not always transparent. Applications to the CPA and DCB are published along with submissions to them. They therefore meet the standard of being open to public scrutiny. The NRA Agreement and the Health City agreement, however, were negotiated without public knowledge by Ministers and there was no public disclosure of its terms until after the Government had committed to them. These major decisions were therefore not open to public scrutiny until elements of them were brought before the CPA.
51. While decisions by the CPA and DCB regarding land use are generally public, the rationale for them often is not. CPA and DCB deliberations are not open to the public and there is no legal requirement for them to provide any rationale for their decisions. We found several cases where departments with technical expertise such as the National Roads Authority, the Water Authority and the Department of Environment, asked for amendments to applications or made objections but these reservations did not form part of the CPA or DCB decision. Often, the decision would state only that the Authority or Board had “considered” information from other agencies.
52. As already noted, we were informed that the CPA often believes agency submissions are not well substantiated but also noted that the CPA has not clarified its requirements for submissions to the agencies concerned. In particular, we found that:
- In the case of the Health City application for a Planned Area Development (PAD), the NRA, the Water Authority and the Department of Environment all made submissions raising significant concerns regarding the nature and impact of the project on the natural environment, the economy and on existing infrastructure. Left unaddressed by both the Planning Department analysis and the CPA decision were:
 - all environmental concerns, including the possible breach of international commitments to undertake environmental assessments of major developments – no Environment Impact Assessment was completed;
 - social-economic impacts of a major hotel, commercial and entertainment district on existing developments, especially the city of George Town;
 - questions regarding the requirement and payment for the bypass highway to the North of the project;
 - questions regarding the sustainability of the load the development will place on other infrastructure, public and private, such as airport, port, schools, recreation, electricity and telecommunications.
 - In the case of the South Sound (Adagio Development) application both the Water Authority and the Department of Environment recommended dredging restrictions to 20 feet and 14 feet respectively to preserve water quality. The Planning Department endorsed a 20 foot restriction as consistent with prior decisions. The CPA nevertheless approved the 30 foot excavation requested by the applicant without explanation.

- When the Seven Mile Beach Hotel in the NRA Agreement came before the CPA for approval the Department of Environment raised concerns regarding the setback from the water and the requirement for turtle-friendly lighting. The NRA concluded that the road connections to the Esterley Tibbets Highway would create “an unjustified hazard to motorists.” The CPA did not make resolving these concerns conditions of approval and did not comment on them in their decision approving the development.
- In our sample of CPA applications we found a similar case where DOE objections regarding setbacks, turtle nesting and appropriateness of a 10 story hotel in a 2-3 story neighbourhood were not considered by the CPA in its decision approving the application.
- The DCB approved an extension to a quarry despite receiving briefs from the Water Authority and the Department of Environment that the applicant was in breach of conditions set by his existing license and asking for remediation to be made a condition of approval. The DCB approved the application without setting these conditions commenting that it had “taken them into account.”

53. We conclude that decision-makers do not always provide reasons for their decisions regarding development and land use.
54. We also wished to determine whether decision-makers were free from conflict of interest and the appearance of conflict of interest. The CPA has guidelines for members of the Board to declare conflicts of interest and to recuse themselves when matters related to their business or to a close relative is brought before the CPA. The guidelines do not impose any sanctions for failure to comply, nor do the guidelines require Board members to disclose business or financial interests when they join the CPA or periodically thereafter. Members are required only to declare a conflict on a case-by-case basis.
55. We could not therefore determine whether Board members had always appropriately recused themselves as required by the guidelines. We further noted that the great majority of members of the CPA appointed since August 2013 were from the development and construction industries. While providing expertise to the CPA, this creates a high risk of conflicts and also adversely affects the appearance of freedom from conflict.
56. The *Standards in Public Life Law* will result in greater transparency by requiring all members of boards and government officials to make a declaration of income, assets and liabilities. It will also allow investigation by the Commission for Standards in Public Life, but does not provide any sanctions.

57. We conclude that overall, decisions regarding development and land use management are not transparent. The CPA and DCB are not required to either open their deliberations to the public or to provide the rationale for their decisions. In the case of the NRA Agreement, major developments were planned by the private sector and agreed to by Cabinet before any public disclosure. The existing internal regulations of the CPA and DCB are inadequate to insure that members are both free from and are seen to be free from conflict of interest. The selection of the majority of members of the CPA from the industry sector most involved in development prejudices the appearance of objectivity and increases the risk of actual conflict of interest.

Recommendation #3: CPA and DCB hearings should be open to the public and should provide a rationale for their decisions.

Recommendation #4: The register of interests for the members of the CPA and the DCB as required by the Standards in Public Life Law be implemented immediately.

Recommendation #5: The membership of the CPA and the DCB should be balanced to include members representing sectors other than the building and development industry.

ENFORCEMENT IS WEAK

58. Planning standards and building codes are intended to maintain public safety and community standards. If enforcement is not adequate, then even well-designed standards and codes will be ineffective. We therefore reviewed the adequacy of selected enforcement programs. We selected a random sample of 28 out of 149 complaints received by the Planning Department from 2011 to 2014. We also reviewed 11 complaints received by the Water Authority during the same time period. We interviewed officials involved in enforcement and complaints at the Planning Department and the Water Authority. Overall, we found that enforcement of regulations has been weakened by inadequate numbers of staff, limitation of information systems, divisions in authority among agencies and the CPA's apparent lack of attention to the advice from technical authorities.

59. The Planning Department has only two Compliance Officers who are not able to handle the volume of complaints received. Of the 28 complaints we reviewed, three files could not be found by Planning Department staff, seven were still open and two more were under appeal. Officials told us that due to the limitations of existing information systems, they were unable to monitor the timeliness of their ability to close complaint files and they were also unable to use complaint data to look for trends in compliance issues. They told us that they were investigating acquiring a new information system. Similarly, we found that four of eleven complaints received by the Water Authority 2011-2014 regarding informal housing were unresolved at the time of our audit.

60. We found that the Water Authority has expressed concern that the CPA has given after-the-fact approvals to a number of building additions without consideration of chronic water management violations and without routing the files to the Water Authority for review as required by the *Water Authority Law (2011 Revision)*. The Water Authority has also expressed concern that the CPA does not include Water Authority requirements for waste water treatment and disposal in its conditions of approval and the CPA's failure to adopt Water Authority requirements for quarry excavation. The CPA believes that these matters would better handled by the Water Authority as part of the permitting stage of the approval process, as is done with other similar technical requirements that must be complied with prior to a permit being granted authorizing the commencement of construction rather than seeking to enforce them as a condition attached to a grant of planning permission.
61. A similar staffing situation exists regarding electrical inspection and building codes. While formerly there was a Chief Building Code Officer who was the most experienced and highly certified individual in the Building Control Unit, this position was retitled Deputy Director of Planning but has been vacant since 2012. The Director of Planning is responsible for final approval. As is the case for water, the three year window for enforcement is problematic as informal housing may not be discovered within three years of construction. Once three years has passed, enforcement is not possible.
62. In our opinion there are both resource and structural issues regarding enforcement that should be addressed.

Recommendation #6: The enforcement functions for planning, building and electrical codes and water should be independent from the planning function and should be appropriately staffed.

Recommendation #7: Laws, regulations and organizations involved in enforcement should be reviewed to ensure that technical experts responsible for public health and safety have the final say in regulatory enforcement.

MANAGEMENT OF GOVERNMENT REAL PROPERTY

63. Government’s responsibilities for the management of real property are divided between core government and the statutory authorities and government companies.
64. The Cayman Islands Government manages about 575 parcels of land of which 279 were considered to be “non-operational” or not linked to current operations. The Value and Estates Office of the Lands and Survey Department maintains the Crown Register, checks for encroachments and buys and sells government property, but the key responsibilities of determining what properties are required and which are to be maintained is vested in various core government user agencies. In addition, there are several government agencies with the authority to manage their own real property directly. This includes, for example, the Cayman Islands Airports Authority (CIAA), the Port Authority of the Cayman Islands (PACI) and the Health Services Authority (HSA).
65. We expected to find that the Cayman Islands Government would:
- have an accurate inventory of the property it owns and have an accurate valuation of that property;
 - only own property required to deliver government policies, programs and services; and
 - ensure that the properties it owns are acquired, maintained, preserved and disposed of to the maximum long-term economic advantage of the Government while satisfying the needs of government programs.

THE GOVERNMENT LACKS AN APPROPRIATE MEANS TO INVENTORY AND VALUE ITS REAL PROPERTY

66. We assessed the systems and practices use by the Cayman Islands Government to maintain property inventories and to value properties in its audit of the 2014 summary financial statements. The audit found that:
- except for the Health Services Authority, statutory authority and government company properties had not been recently revalued;
 - finance officials informed us the road inventory is not complete;
 - the heritage asset classification arbitrarily assigns a Nil value to over 80 pieces of property.

67. In 2012, the Lands and Survey Department undertook the first revaluation of government property since 2001. The project was completed in May 2013. We have reviewed the revaluation and concluded the Government’s methodology to valuing the inventory was appropriate.
68. According to the *Public Management and Finance Law (2013 revision)*, the Government may acquire property by vesting to the Financial Secretary if private sector companies cease business and are struck off the register of companies. Officials told us there is no formal procedure to ensure the vesting of the land holdings of defunct companies in the name of the Financial Secretary. Nor does there appear to be a procedure in place to ensure the conversion of such titles to the Crown after ten years as required by the Law. Lands and Survey’s last attempt to reconcile the vested assets with the Registry and the Financial Secretary’s office was in 2009.

THE GOVERNMENT OWNS PROPERTIES NOT REQUIRED FOR ITS OPERATIONS

69. In response to the Public Service Review of 2011 and the Asset Revaluation project referred to above, work was undertaken by the Valuation & Estates Office to identify “non-operational property”, that is, property not required for any government program. Valuation & Estates has found that there are 279 parcels of non-operational property which are appraised at approximately CI\$60 million. The Chief Valuation Officer has indicated that some of these properties constitute a liability to the Government as they have been encroached upon or used for dumping trash. Cabinet has considered the matter and has provided the Ministry of Planning, Lands, Agriculture, Housing and Infrastructure (PLAHI) with a list of 69 properties it considers available for sale. PLAHI is now preparing a Cabinet paper evaluating all 279 properties and making disposal recommendations and have indicated that this assessment will lead to selection of properties for disposal and the preparation of individual business cases.
70. As part of our audit we reviewed a sample of 13 non-operational properties. We found that in at least six cases the asset clearly had no link to the strategic objectives of the Cayman Islands Government and should be disposed of. We found three cases where there was political direction to acquire property or to pay more than the assessed value:
- land for Barkers National Park was purchased for \$3,000,000 against an assessed value of \$2,200,000 at the direction of Cabinet;
 - the Government purchased a house next to the Brac fire station after the owner complained of noise and fumes from the station. The Government paid \$171,000 versus the assessed value of \$142,000. The fire station plans to use the house for storage, although it had no pre-existing requirement for additional space. Although the property was purchased in 2012, the property transfer is still incomplete and the building is unused; and

- in 2012 the Minister of District Administration, Works, Lands and Agriculture (DAWL&A) directed that the Government purchase a property in an undeveloped subdivision in Cayman Brac at its assessed value of \$125,000 with unspent funds at year end. Although a Cabinet Paper states the rationale for the purchase as development of affordable housing, the property has never been vested with Sister Islands Affordable Housing nor is there any evidence that the agency was consulted prior to the acquisition.

71. Involvement of Ministers in government operations is contrary to the Cayman Islands governance framework. In the last case above there is a possible breach of trust as there was no evident government requirement whatsoever.
72. We also noted that the former government office building on Elgin Street, commonly called the “Glass House”, has been unoccupied for around three years. There have been various proposals for the use of the building, the most recent being in 2009 that it be turned into a financial centre. The building is not up to code and Lands and Survey are concerned that in case of a hurricane the windows would present a hazard. We could not find any plan or discussions held regarding the use of the building since 2009. At the end of our audit officials told us that the Government intends to demolish the building and convert the site to a public park. Officials anticipate letting a request for proposals in by the summer of 2015.

INDIVIDUAL AGENCIES ADEQUATELY MANAGE THEIR PROPERTIES

16. We reviewed the property management of two agencies: the Health Services Authority (HSA) and the National Roads Authority (NRA). We assessed whether they acquired and maintained only the property required by their programs and managed it economically and efficiently. We found that both agencies have managed their properties well.
73. The HSA has conducted a detailed study of its real property needs and has acquired land to support its planned construction. HSA has worked with the Central Tenders Committee to ensure its acquisition was properly valued and was able to acquire the property it needed below its estimated market price. According to its own study, it has no non-operational real property assets.
74. The NRA’s principal asset responsibility is roads and it has systems in place to monitor their condition and to ensure that construction and maintenance costs are reasonable.
75. We noted that agencies receive little direction as to what principles should be used to manage real property. We found no central manager in the Government responsible for setting real property management policy overall.

Recommendation #8: The Lands and Survey Department should dispose of properties deemed surplus.

Recommendation #9: The Ministry of Finance, the Registrar of Companies and the Department of Lands and Survey should develop procedures to ensure that properties acquired from defunct companies are appropriately accounted for and transferred to the Crown.

Recommendation #10: The Department of Lands and Survey should develop government-wide policies and processes to ensure the highest and best use of lands are well managed by all government agencies.

GOVERNANCE OF MAJOR DEVELOPMENTS

76. The Government's responsibilities for land management are laid out in legislation as noted in previous sections of this report. In developing and operating a robust management framework to achieve the legislation's intent, Government officials should ensure effective development in the Cayman Islands while ensuring compliance with legislation. In reviewing how the Government implemented and operated their management frameworks, we identified issues regarding both compliance with the framework and also the adequacy of the framework itself.

WHAT IS THE GOVERNANCE MODEL?

77. The governance of expenditure management for the Cayman Islands is set out in the *Public Management and Finance Law (2013 Revision) (PMFL)* and the *Constitution Order of 2009*. These laws establish a management model based on clear segregation of roles:

- Ministers are to set policy, propose outcome objectives and forecast expenditure in a three-year Strategic Plan;
- Ministers are to "influence specific outcomes" though recommending outputs, transfer payments, equity investments and changes to fees or through legislative measures;
- Chief Officers are to determine and acquire the "inputs" (resources) needed to produce the outputs specified in the annual budget statement; and
- the Legislative Assembly is to approve all expenditure by passing appropriation laws.

78. The essential principle is that government must have specific authority from the Legislative Assembly to undertake any new initiative.

79. While not specifically stated, written into the PMFL are management principles which all government expenditure is to follow including: effective medium-term planning, value for money, management of risk and accountability for the use of public resources. The PMFL sets out clear requirements for achieving value for money in government expenditure. There must be an appraisal and business case "*for all projects whether funded from recurrent surpluses, conventional borrowing or all alternative finance mechanisms . . . before the procurement stage to ensure value for money.*" The Government is required to retain independent accounting, legal, financial, economic, environmental and other technical advice "*to ensure robust investment appraisals are produced.*"

80. *PPPs or any other form of alternative financing will only be considered:*

- a. where there is a sound appraisal underpinning the proposed project before the financing means has been determined;*
- b. where a financial appraisal demonstrates improved value for money against a conventionally financed alternative;*
- c. where the long term affordability case has been assessed and agreed by the appropriate technical experts retained by the Cayman Islands Government; and*
- d. where an independent opinion has been received from a qualified accountant of good standing on the correct accounting treatment in the Cayman Islands Government's accounts. - PMFL (2013 revision)*

81. The PMFL has had effect since 2004. The FFR, which was signed in November 2011, was incorporated in the PMFL in November 2012. The requirements of the FFR therefore pre-date the Health City agreement and are concurrent with the negotiation of the NRA Agreement. An appraisal, business case or cost-benefit analysis is nevertheless a basic good practice for any significant undertaking and ought to have been performed whether or not required by law.

82. We reviewed two major development agreements entered into by the Cayman Islands Government: the NRA Agreement and Cayman Narayana Health University Agreement (Health City). We assessed these agreements to determine if the Government had complied with legal requirements governing expenditure and whether the principles of good management for major projects had been applied.

83. In 2010 Ministers entered into negotiations with Dart Realty (Cayman) Ltd. (DRCL) to undertake massive and complex development to stimulate the Cayman Islands economy and to provide public infrastructure and other programs that would be otherwise unaffordable for the Government to undertake on its own. DRCL and the Government signed a non-binding agreement on 12th April 2010 known as the "ForCayman Investment Alliance," described as a "partnership" between DRCL and the Government. DRCL agreed to remediate the George Town landfill (GTLF) site and provide a new waste management facility in exchange for DRCL receiving title to the GTLF lands. DRCL also agreed to extend the Esterley Tibbetts Highway and to redevelop the site of the former Courtyard Marriott. Among other components, DRCL agreed to construct the first phase of an adult training centre and to "facilitate the sponsorship of specified government social programs" by providing US\$16,400,000. For DRCL's commitments, the Government agreed to provide development permissions and tax and duty concessions.

84. From our review of documentation, we understand that the ForCayman Investment Alliance components proved too complex to implement in a timeframe which would see immediate economic development and impacts, and the parties agreed to take a subset of the projects and finalize them in a binding agreement, the "NRA Agreement." The Agreement required DRCL to extend the Esterley Tibbetts Highway to Yacht Drive and upon completion Government would close

West Bay Road from Governor's Way to Yacht Drive with most of the land vesting to DRCL as the adjacent landowner.

85. The closure of part of West Bay Road and vesting in DRCL in the Seven Mile Beach area became more suitable for hotel and related development as it would remove the road that separated them from the beach. As such, DRCL was required to commence redevelopment of the site of the former Courtyard Marriott Hotel that had been closed since Hurricane Poloma in November 2008. DRCL was further committed to extend the Esterley Tibbetts Highway to Batabano Road. As a result of the NRA Agreement, Government would gain a major trunk highway which it could not otherwise afford to build. Construction of the highway would also improve access to other DRCL land and land owned by other landowners, as well as improved access to West Bay. The Esterley Tibbetts Highway to Batabano had been planned by Government for many years; however, Government lacked the resources to complete the road. In addition to closing the West Bay Road, the Government agreed to give DRCL abatements on stamp duty, development fees and import duties on any DRCL development. DRCL was also provided a 50 per cent rebate on all taxes levied pursuant to the Tourist Accommodation (Taxation) Law for up to 40 years on its hotel developments.
86. The Cayman Narayana Health University (CNHU) or "Health City" development is intended to support medical tourism. "Health tourism" is "travelling to a destination in another country to receive medical, dental and surgical care because the destination enables better access to care, provides higher quality care, or offers the same treatment at an affordable price"¹. The first phase of Health City is a 200 bed hospital. Phase 2 will be an educational institution offering training in medicine, dentistry and nursing and Phase 3, proposed to start within 5 years of the start of operations, would include assisted living housing for seniors. In the full project, the hospital is to grow to 2,000 beds. The Government estimated that the full project would cover approximately 500 acres in the East End of Grand Cayman, creating a major urgent development. The project originated in in 2008 when Government asked publicly for suggestions for the creation of economic stimulus. The approach led to contacts with Dr. Devi Shetty, a medical entrepreneur. Dr. Shetty made a proposal to the Government in 2009, Cabinet met to consider it on 6 April 2010 and the Government signed the Agreement on 7 April 2010.
87. Health City is an entirely commercial operation undertaken by a private sector company with no direct government investment. However, the Cayman Islands Government offered numerous inducements to the company which will impose costs on the Government for decades. Principal among these are: US\$800 million in customs duty concessions on medical equipment and supplies, an un-estimated amount in reductions in work permit fees, provision of water at a preferential rate

¹ Paper by the Honourable Minister of Health, Environment, Youth, Sports and Culture, CP No. 389/10, 31 March 2010

by the Water Authority for an unspecified period of time, a commitment to upgrade airport facilities – including establishing a new airport if necessary – to accommodate increased traffic due to medical tourism, an exemption for 50 years on the liability to pay for any duty or charge on “life-saving medical equipment and medical supplies” including human organs for transplant, and working with Cayman Airways to secure preferential airfare rates for patients and personnel and the provision of charter services for such persons.

88. Although not part of the Agreement, the construction of Health City would require significant infrastructure improvements, including a bypass highway.

THE GOVERNANCE FRAMEWORK WAS NOT RESPECTED

89. As already noted, the governance framework for government expenditure requires that Ministers set objectives and policy, but do not become involved in selection of means or in operational implementation. Moreover, all expenditure must be approved by the Legislative Assembly. In both cases studied, neither of these legal requirements was met.

NRA AGREEMENT

90. The NRA Agreement was negotiated by the Ministers without the knowledge or assistance of civil servants and presented to them in a detailed agreement drawn up by DRCL which had legal obligations they were required to implement with little time for analysis or revision. The Ministers were clearly acting outside their roles in the governance framework. In addition, although a highway was acquired, land disposed of and extensive tax and duty concessions made, there was no information presented to the Legislative Assembly for decision making as required by the PMFL.

HEALTH CITY

91. The Health City Agreement was also negotiated by the Ministers. The proposed agreement was presented to Cabinet together with some analysis and input from the Ministry commenting on the terms of agreement. Although there was input from the civil service, we believe that Ministers acted outside their legal roles by becoming involved in the selection of means. Again, no information was provided to the Legislative Assembly, even though the agreement committed government to hundreds of millions of dollars in tax, duty and fee concessions and contained obligations for infrastructure upgrading and expenditure.
92. We conclude that in both cases the Government acted unlawfully and without authority in signing these agreements.

Recommendation #11: The Government should comply with the *Public Management and Finance Law* and ensure it has authority for public expenditure.

VALUE FOR MONEY WAS NOT ADEQUATELY ASSESSED

93. Both the NRA Agreement and the Health City development were complex and involved major government expenditure, both in the current period and into the future. We expected that before committing the Government to significant future expenditure or revenue waivers, that adequate studies would be undertaken to assess costs and benefits and to determine both affordability and net benefit to the Cayman Island Government.

NRA AGREEMENT

94. Prior to signature, the Government did receive substantial information and advice from the National Roads Authority, Lands & Survey and the Attorney General. Lands & Survey provided an estimate of the value of lands being transferred, but declined to quantify the benefits to the Government. A paper presented by the former Minister of District Administration, Works, Lands and Agriculture (DAWL&A) to Cabinet was based entirely on DRCL reports and included benefits based on DRCL expenditure which was discretionary without clearly indicating this was so. There were also future expenditures by DRCL which were discretionary without clearly indicating this was so. Post-signature, the Government conducted an independent review to determine whether it was receiving value for money. The independent review concluded that the infrastructure and the Seven Mile Beach component of the Agreement provided value for money, but raised questions regarding both the concessions for stamp duty, development fees and import duty abatements and also for the hotel tax rebate. In these cases the Agreement was too vague to determine what the Government would eventually have to give DRCL in exchange including the forgoing of future revenue.
95. The independent review reported on or about 4 May 2012 and the review period specified in the Agreement ended on 21 May 2012 leaving the Government with a very short window in which to renegotiate or terminate the Agreement. In fact, termination would have been difficult for the Government to pursue. DRCL began construction of the ETH extension soon after signing in January 2012 and by May of that year had been engaged in construction for five months. Under the terms of the Agreement the Government would become liable to pay for these works and other DRCL expenses. As no land was transferred to DRCL until 13 March 2013, there would have been no offsetting benefits that could have been claimed by the Government.

96. Our conclusion is that the NRA Agreement does not meet the principles of the FFR, even though these are no more than good management practice. The Government had inadequate understanding of the costs in terms of duty and tax concessions to which it had committed itself for up to 40 years. Prior to signature, although it had received some studies from individual government agencies, these did not collectively amount to a complete value for money assessment. When it did finally commission a value for money analysis this arrived just weeks before the lapse of the review period and contained significant red flags. The Government lacked sufficient time or leverage to correct these deficiencies in the Agreement and, in fact, undertook negotiations for a 3rd Amendment. These negotiations failed and we were informed that the current Government is refusing to honour the Hotel Tax Rebate while DRCL is claiming that the Government is in material breach of the Agreement. There is therefore a risk that the Government may be liable for damages.

HEALTH CITY

97. When the Health City agreement was presented to Cabinet, the Government was in possession of two studies: one undertaken for the private sector company proposing the development and a second for the Ministry, Health, Education, Youth, Sports and Culture (HEYSC). Neither study resulted in a complete, fully documented report. Rather, they were slide decks, labeled “draft.” The private sector study was very basic and projected revenue streams based on company forecasts. It did not address government costs. It pointed out that medical tourism in the Cayman Islands would have to compete with Asian providers who had costs ranging from 6 to 33 per cent of costs in the United States.
98. The Ministry study questioned the competitiveness and profitability of health tourism in the Cayman Islands. It questioned the basis for the business volume projections made in the private sector study and asked what case mix and cost factors lay behind the revenue projections. The Ministry study asked how the new facility could meet its target of high-quality care at 50 per cent of US prices when building and operating costs in the Cayman Islands were generally high, while in India, where Dr. Shetty had succeeded, they were low. The study found that the vision of a comprehensive facility including a school, hotel and assisted living facility was too vague to assess. Finally, the Ministry study noted that the proposal did not mention the need for transparency in health outcomes to document quality to potential clients, the need for benchmarking data and standards of comparison so that patients can make informed decisions, and a business model that provides continuity of care pre- and post-operation for foreign patients. The analysts considered these factors to be critical to success in the US market.
99. When the agreement was tabled in Cabinet, questions were raised about the wisdom of signing such an extensive agreement without a full study. Assurance was provided that the proposal had been researched by the former Minister and that a full study was in progress. No such study was ever completed.

100. We therefore concluded that the CIG committed to significant potential expenditure without adequate study of the costs and benefits involved. The value for money to Cayman of Health City therefore cannot be verified. There is a risk that, should Health City expand to its full size, the CIG could come under pressure to provide infrastructure which it cannot afford. While employment of Caymanians would increase and there would be private benefits, there would not be a proportionate growth in tax revenues due to the concessions given the company. The Government could thereby come under pressure to enter into unfavourable concessionary deals to provide expanded infrastructure.

Recommendation #12: The Government should follow the PMFL by ensuring there is a process for Legislative approval for all government expenditures, including those which may not require an immediate or direct outlay of funds.

CONTROLS OVER ALTERNATIVE FINANCING INITIATIVES ARE WEAK OR UNIMPLEMENTED

101. The NRA Agreement and Health City both represent some sort of “partnering” with the private sector. The NRA Agreement, in fact, grew out of a more global draft agreement which explicitly referred to a “partnership.” The Agreement, however, was actually a contract for the purchase of a highway, infrastructure improvements such as a public beach and the funding of a mortgage subsidy program paid for by an exchange of land and tax concessions. In the Health City agreement the Government did not receive any actual assets, but agreed to provide tax concessions, regulatory concessions and infrastructure improvements in return for the establishment of a tertiary care facility aimed at foreign medical tourists. The Government would also receive access to the facility at a reduced rate and a “technology transfer” through the training of Caymanians at the facility.

102. Implementation of the Government side of these initiatives has been inadequate. The National Roads Authority adequately supervised the construction of the Esterley Tibbets Highway extension and ensured that it was completed to the agreed design specifications. However, we found no system in place to supervise and verify claims for customs duty abatements under the agreement. The Chief Officer, DAWL&A, engaged a consultant to act as a “Liaison Officer” to monitor the project, track milestones and ensure that the projects, services and standards in the agreement were carried out. Although the consultant billed the Government CI\$37,500 in 2012 we could not determine what work he had performed other than attend a small number of meetings, the minutes for which were produced by DRCL officials as agreed by the parties. In the case of Health City, we could find no official whatsoever who acknowledged responsibility for implementing the Government’s undertakings in that agreement.

103. As already noted, in both cases these projects were not approved by the Legislative Assembly and were dealt with by irregular means outside the PMFL. Value for money analysis was conducted too late in the process to be fully utilized (NRA Agreement) or was inadequate and incomplete (Health City). Debt constraints imposed by the PMFL means that pressure for alternative financing is likely to increase. Projects such as the Cruise Berthing Facility, the George Town Airport and the George Town Landfill might all seek alternative financing arrangements.

104. The PMFL lays out a framework for Public Private Partnerships (PPP's) but the Government has not detailed policies or procedures governing PPP's. Previous audit reports and the report of the Government's Procurement Sub-Committee have found weaknesses in procurement in general. The Procurement Sub-Committee recommended a number of reforms, including the activation of the Public Sector Investment Committee (PSIC) to advise Cabinet on the viability of major capital development projects. PSIC was established in Financial Regulations under the PMFL, but has never been implemented. The Procurement Sub-Committee also recommended the creation of a Central Procurement Office. These reforms need to be extended to alternative financing schemes, whether or not they result in the creation of a government asset.

Recommendation #13: The Public Sector Investment Committee and the Central Procurement Office should be established without delay and its mandate enlarged to include alternative financing initiatives.

Recommendation #14: The Ministry of Finance should implement policies and procedures to govern alternative financing initiatives. This responsibility should be considered when creating the Central Procurement Office as announced by government officials.

REVIEW OF RECENT EVENTS

105. This audit fieldwork was conducted between February and August 2014. Since that time there have been government initiatives regarding both the negotiation of a third amendment to the NRA Agreement and to the management of major capital projects.

106. **NRA Agreement** The Government has determined that it wishes to amend the NRA Agreement to eliminate the Hotel Tax Rebate while continuing to promote tourism and hotel development in the Cayman Islands. It has therefore entered into negotiations with DRCL to complete a third amendment to the NRA Agreement. We reviewed the most recent correspondence and reports related to these negotiations and interviewed officials.

107. We note that the Government has sought advice regarding the terms and conditions of the proposed amendment from both external advisors and from officials in a timely manner. However, we noted the following:

- Ministers are still involved in directing negotiations, rather than confining themselves to providing policy direction to officials and requiring them to negotiate;
- the participation of the governing party caucus in the drafting of the proposed amendment, a process outside the current governance framework, has increased direct political involvement in government operations; and
- the Government remains highly reliant on external advice and has not taken steps to build internal capacity to provide analysis and advice on development.

108. Officials expressed the opinion that when matters of national importance are being negotiated, individual transactions take on policy significance and it is not practical to exclude Ministers from them, regardless of the governance framework of the CIG. They also pointed out that Cabinet and possibly Governor approval is required for the disposal of Crown land, making complete delegation to the civil service not possible.

109. In our opinion, although the Government has been heavily engaged in the NRA Agreement file, there has been little that would affect the previous findings or recommendations of this report. However, we believe that processes for the involvement of Ministers should be formalized as they are elsewhere to ensure integrity and transparency.

110. As there is no third amendment in place, we are not in a position to assess whether the Government will achieve value-for-money from the NRA Agreement.

111. **Major procurements:** Officials told us that the Government has already taken steps to improve the procurement process. They informed us that a Director of Procurement has been recruited with a

view to establishing a procurement office. They also informed us that Ministry of Planning, Lands, Agriculture, Housing and Infrastructure (PLAHI) has taken steps to establish a major projects office. We believe these are welcome developments and represent the first steps in responding to the related findings of this audit. We will review the operations of these initiatives in future audits.

CONCLUSION

112. Our audit of development and land management has raised fundamental issues, both for the management of land and also for the management of government expenditure.

113. Development and land management are critical responsibilities of the Government that affect everyone living in the Cayman Islands. The *Cayman Islands Constitution Order 2009*, the Development Plan 1997 and Vision 2008 all made preservation of the environment an important government objective. The *Constitution Order 2009* perhaps sums it up best in saying,

18. – (1) Government shall, in all its decisions, have due regard to the need to foster and protect an environment that is not harmful to the health or well-being of present and future generations, while promoting justifiable economic and social development.

(2) To this end government should adopt reasonable and other measures to protect the heritage and wildlife and the land and sea biodiversity of the Cayman Islands that –

(a) limit pollution and ecological degradation;

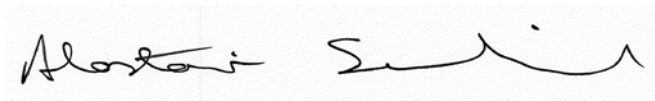
(b) promote conservation and biodiversity; and,

(c) secure ecologically sustainable development and use of natural resources.

114. We have noted that between 1976 and 2008 that two-thirds the wetlands on the western part of Grand Cayman have been lost with no protection for eastern wetlands in place. We have noted many other specific instances where environmental concerns have been overridden without explanation or preservation goals were unmet. Large-scale, investor-driven development such as the NRA Agreement and the Health City development is accelerating the pace of development. The Legislative Assembly needs to determine whether these trends should be allowed to continue or whether a comprehensive development plan should be developed by the Government and put before it as required in the *Development and Planning Law*.

115. We also found considerable problems related to the Government complying with its own governance framework for managing public expenditure. We highlighted examples where there has been a lack of respect for the segregation of roles demanded by the PMFL. Under the PMFL, Ministers are to set policy and have limited means of influencing program delivery, Chief Officers are to craft plans to deliver the outcomes, and to oversee implementation, and the Legislative Assembly is to approve all expenditure. In the two cases we studied, assets were acquired and long-term tax concessions made by Cabinet without any form of approval being sought from the Legislative Assembly. In our opinion, these actions were unlawful and are serious deviations from the process in place to protect the people of the Cayman Islands from possible corruption by public officials.

116. Other parts of the governance framework have not been put into place, even though laws have been passed by the Legislative Assembly. The Public Sector Investment Committee in the PMFL, the *Standards in Public Life Law*, and the *National Conservation Law* have all been enacted and given Royal assent, but are not yet fully in force.
117. Finally, our audit shows that much remains to be done to create a framework for the management of Public Private Partnerships (PPP's). The increased use for such vehicles was anticipated when the Framework for Fiscal Responsibility was signed and indeed, it appears that future major development of infrastructure will not necessarily be government-led or completely government-financed. The FFR, which is now embedded in the PMFL, provided an outline of the principles that are used to manage PPP's, but detailed policies and procedures are still required to ensure that the Government receives value for money. Examples of such policies and procedures exist and have been used for a considerable period of time in other jurisdictions and it should not be difficult to adopt and customize the required framework for the Cayman Islands. A framework and transparent process would assist the Government in attracting high quality institutional investors as they are now diversifying into infrastructure PPP's.
118. The creation of a procurement office and a major capital projects office should strengthen the Government's management framework and result in more effective management of PPP's and major capital projects in the future.



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APPENDIX 1: ABOUT THE AUDIT

AUDIT OBJECTIVE

1. The objective of the audit was to determine whether the Cayman Islands Government is adequately managing land use and development to meet government objectives, both for the Cayman Islands in general and also for Crown Lands in particular.

AUDIT CRITERIA

2. The audit criteria were developed from Cayman Islands laws and policies, particularly the *Development and Planning Law*, the Standards in Public Life Bill, 2009, the *2009 Constitution Order*, Sec. 18, and the *Public Management and Finance Law*. Additional criteria have been drawn from Cayman Islands procurement policies, and the United Kingdom and Canadian policies on governance and public private partnerships.
3. Specific criteria for governance, planning and development were:
 - a. There should be a development plan for the Cayman Islands which should be updated and approved every five years, should identify areas of economic, environmental and cultural importance and define government objectives in those areas, and which should include all Crown lands, including those below the high water mark (“Crown bottom”).
 - b. There should be a governance structure in place that co-ordinates all government departments and agencies that have the authority to govern land use or own land on behalf of the Crown.
 - c. Decisions regarding land use should be open to public scrutiny. Decision-makers should provide reasons for their decisions and restrict information only when the wider public interest clearly demands.
 - d. Decision-makers should be, and be seen to be, free of conflicts of interest .
 - e. Government shall, in all its decisions, have due regard to the need to foster and protect an environment that is not harmful to the health or well-being of present and future generations, while promoting justifiable economic and social development.
 - f. Government should have reasonable legislative and other measures to protect the heritage and wildlife and the land and sea biodiversity of the Cayman Islands that limit pollution and ecological degradation, promote conservation and biodiversity, and secure ecologically sustainable development and use of natural resources.
 - g. Enforcement programs should be adequate to maintain the integrity of plans and policies and violations should be prosecuted.

4. Criteria for the management of government property and leases were:
 - a. Departments should define and implement a framework for managing real property in their custody and maintain the information needed to meet all their responsibilities according to statute and Cabinet direction.
 - b. Departments should develop, maintain, and apply suitable structures, policies and practices as well as organizational authorities and the technical, administrative, and financial systems appropriate to managing real property in their custody.
 - c. The government should acquire, manage, and retain real property only to support the delivery of government programs and do so in a manner consistent with the principle of sustainable development.
 - d. Custodial departments should acquire, maintain, preserve, and dispose of real property to the maximum long-term economic advantage of the government while satisfying their real property needs.

5. Criteria for Public Private Partnerships (PPP) included:
 - a. There should be a policy framework in place to manage the development of PPP's. The framework should include:
 - i. a statement of policy regarding the objectives and purposes of PPP's within the Cayman Islands Government;
 - ii. standards for business cases supporting PPP decisions;
 - iii. processes for negotiating or tendering for PPP's; and
 - iv. standards for contract management and performance monitoring of PPP's.

AUDIT SCOPE AND APPROACH

6. The audit documented statutory requirements, policies and practices for land planning and development in the Cayman Islands and for the management of real property held and used by all government agencies. The audit included all lands managed by the Central Planning Authority, the Development Control Board and by Cabinet.

7. For Crown properties we reviewed the Government's framework to determine whether there was an adequate asset management system in place for real property. We reviewed inventories to determine if properties not required for program requirements were retained and whether agencies managed properties to achieve the highest and best use of them. We assessed whether acquisition and disposal transactions had been publicised, and open to competition and without undue influence from any party. In addition, we referred to our audit work conducted on the audit of the 2014 consolidated financial statements.

8. We also reviewed the framework in place for the management of Public Private Partnerships (PPP's). We reviewed two cases to determine whether they had been developed in an open and competitive process to the extent possible, whether the rationale for directed contracting was well-documented and made public, and whether government staff assigned to negotiate and oversee PPP's were adequately qualified.
9. As well as conducting a general review of management systems and sampling transactions we carried out in-depth case studies of the NRA Agreement, the Health City and South Sound (Emerald Sound and Adagio Development).
10. We conducted the audit by interviewing senior officials and reviewing files and databases of government departments and agencies. The majority of our examination took place between May and August 2014. Clearance of this report started in September 2014 and was completed in May 2015. The clearance was coordinated through the Chief Officer of PLAHI.

AUDIT STAFF

11. The audit was carried out under the direction of Martin Ruben, CPA, FCGA, Performance Audit Principal and by a consultant and three Audit Project Leaders working in the Office of the Auditor General.

APPENDIX 2: RECOMMENDATIONS

Recommendation	Management Response	Responsibility	Date of planned implementation
#1. The Development Plan for the Cayman Islands should be comprehensively updated. The area approach suggested by the Public Service Review is worthy of consideration as an approach to this task.	Management supports this recommendation.	The Ministry of PLAHI and the Department of Planning	TBD in accordance with policy direction received from Government.

Recommendation	Management Response	Responsibility	Date of planned implementation
<p>#2. The Crown Lands below the high water mark should be included in national development plans and that:</p> <ul style="list-style-type: none"> • Cabinet be removed from day-to-day operational decision-making; • a specific agency be made responsible for long range planning of off-shore development; and • the CPA’s discretion should be exercised in conformance with national policy, land use plans and advice from the Department of Environment. 	<p>Management supports this recommendation at a general level, but notes that there are a number of specific issues that would need to be considered and addressed in advance of implementing this recommendation. Of particular concern is the extent of the Development Plan extension as it relates to the Crown ownership of land below the water line.</p>	<p>Ministry of PLAHI, the Ministry of FSCE, the Department of Planning, Chief Surveyor and the Department of Environment.</p>	<p>TBD in accordance with policy direction received from Government.</p>
<p>#3. CPA and DCB hearings should be open to the public and should provide a rationale for their decisions.</p>	<p>This is a matter for the CPA and DCB. Management is therefore unable to give an undertaking in this regard.</p>	<p>CPA and the DCB</p>	<p>TBD. Policy direction required of Government.</p>
<p>#4. The register of interests for the members of the CPA and the DCB as required by the Standards in Public Life Law be implemented immediately.</p>	<p>This is a matter for the CPA and DCB. Management is therefore unable to give an undertaking in this regard.</p>	<p>CPA and the DCB</p>	<p>TBD. Policy direction required from Government.</p>

Recommendation	Management Response	Responsibility	Date of planned implementation
<p>#5. The membership of the CPA and the DCB should be balanced to include members representing sectors other than the building and development industry.</p>	<p>This is a matter for the Cabinet. Management is therefore unable to give an undertaking in this regard.</p>	<p>The Cabinet</p>	<p>TBD</p>
<p>#6. The enforcement functions for planning, building and electrical codes and water should be independent from the planning function and should be appropriately staffed.</p>	<p>We agree that the enforcement functions should be appropriately staffed, however we are unable to support the recommendation to separate them from the planning function. To do so would further fragment the enforcement process, and it is feared further compromise its effectiveness.</p>	<p>Cabinet, regarding new policy direction if deemed necessary.</p>	
<p>#7: Laws, regulations and organizations involved in enforcement should be reviewed to ensure that technical experts responsible for public health and safety have the final say in regulatory enforcement.</p>	<p>This occurs at present. Technical expertise directed to these areas is deemed to be satisfactory for purpose.</p>		

Recommendation	Management Response	Responsibility	Date of planned implementation
#8: The Lands and Survey Department should dispose of properties deemed surplus.	Under the direction of Government (and as part of Project Future) this process has already commenced.	Ministry PLAHI, Lands & Survey Dept.	Ongoing. Sales to be phased to maximize value and to align with existing staffing resources.
#9: The Ministry of Finance, the Registrar of Companies and the Department of Lands and Survey should develop procedures to ensure that properties acquired from defunct companies are appropriately accounted for and transferred to the Crown.	Management is not in disagreement with this recommendation. However, the difficulties in putting in place a workable system should not be underestimated.	Ministry of Finance, Ministry PLAHI, Registrar of Companies, Director of Lands & Survey.	Exploratory work has already commenced. Any implementation date to be subject to the solving of certain difficult technical matters and the obtaining of directives on some legal aspects of the current law.

Recommendation	Management Response	Responsibility	Date of planned implementation
<p>#10: The Department of Lands and Survey should develop government-wide policies and processes to ensure the highest and best use of lands are well managed by all government agencies.</p>	<p>Management agrees with this aim, whilst having some reservations about the practicality of applying any agreed policies to those entities outside of core government. Any decisions based on highest and best use will remain subject to variations arising from the effect of other socio – economic factors and/or Cabinet directives.</p>	<p>Cabinet directive required.</p> <p>Responsibility for overall Crown land management to rest with PLAHI/Lands & Survey Dept.</p>	<p>TBD based upon Government directives.</p>
<p>#11: The Government should comply with the Public Management and Finance Law and ensure it has authority for public expenditure.</p>	<p>Management agrees with this statement.</p>	<p>Government-wide.</p>	<p>Immediate</p>
<p>#12: The Government should follow the PMFL by ensuring there is a process for Legislative approval for all government expenditures, including those which may not require an immediate or direct outlay of funds.</p>	<p>Management would not disagree with this aim as a general rule and as it relates to Ministry PLAHI. However, it cannot speak to Government policy or take responsibility for other Ministry's expenditure or that of other public entities.</p>	<p>Government-wide.</p>	

Recommendation	Management Response	Responsibility	Date of planned implementation
<p>#13: The Public Sector Investment Committee and the Central Procurement Office should be established without delay and its mandate enlarged to include alternative financing initiatives.</p>	<p>This recommendation needs to be directed to Minister/Ministry of Finance.</p> <p>However, it should be noted that a Director of Procurement has recently been recruited and sits within the office of the Financial Secretary.</p>	<p>Minister/Ministry of Finance.</p>	
<p>#14: The Ministry of Finance should implement policies and procedures to govern alternative financing initiatives. This responsibility should be considered when creating the Central Procurement Office as announced by government officials.</p>	<p>This recommendation needs to be directed to the Minister/Ministry of Finance.</p>		

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Complaints

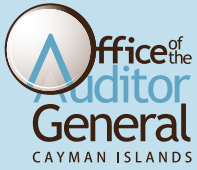
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