
National Roads Authority
Minutes of the Two Hundred & Fortieth-first E.O. Meeting
of the Board of Directors
held in
NRA Conference Room,
370 North Sound Road, George Town, Grand Cayman
Thursday 30th November 2017 at 10:00 a.m.

In attendance were:

Donovan Ebanks	Chairman
Dane Walton	Director
Kenross Connolly	Director
David Arch	Director
Stanley Panton	Director
Paul Bodden Jr (Andy)	Director
Paul Parchment	Managing Director – NRA
Edward Howard	Dep. Managing Director – NRA
Priscilla Jackson	Acting Executive Secretary – NRA

Apologizes :

Gary Clarke	Deputy Chairman
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Absent :

Tristan Hydes	Director Designate of Chief Officer, Ministry CP&I
Charles Brown	Observer - Ministry CP&I

1. Call to Order

The Chairman called the meeting to order at 10:02am.

2. Review of Roads Law (2005 Rev) & NRA Law (2016 Rev)

2i. Issues Affecting the Roads Law & NRA Law; 08Aug2017; MD

Minutes of 27th September 2017
No further discussion.

2ii. Review of NRA Law & Roads Law; 15Sept2017EH; RevPP19Sept2017

The MD was invited to speak to the matters set out in the latest document:

1. Constitution & Responsibilities of the Board & The Authority

Minutes of 27th September 2017

Issue: Revise relevant sections of Part II of the NRA Law to provide synchronicity with the provisions of the Public Authorities Law, 2017

Discussion: The MD was asked to review PAL and identify any clauses which he felt posed concerns and conflicts relative to the NRA Law.

Desired Outcome: Synchronicity of the NRA Law Part II and the Public Authorities Law, 2016.

Issue: Revise the duties and responsibilities of the Executive Secretary in Section 7(7) of the NRA Law to align with those of 'The Recording Secretary' in the Public Authorities Law, 2017

Discussion: No obvious conflicts were identified.

Desired Outcome: Synchronicity of the duties and responsibilities of the Executive Secretary in the NRA Law Part II and the Recording Secretary in the Public Authorities Law, 2016.

Issue: Remove the ambiguity posed in Section 14(1) of the NRA Law (Power to Employ) by clearly assigning the responsibility for hiring, organizational structure and disciplinary procedures to the Managing Director and not the Board of Directors.

Discussion: Section 12 of the NRA law makes provisions for the Board to delegate authority to the MD to hire and manage staff. Section 14 empowers the Board to engage others who presumably would report directly to the Board and not the MD.

Desired Outcome: Clearly distinguish the authority of the Board to authorise the MD to hire and manage staff who in turn report to the MD (currently section 12) *from* the authority of the Board to hire and manage persons and engage services reporting to the Board (currently section 14).

Issue: Revise Section 11 of the NRA Law to allow for multiple Deputy Managing Directors (DMD's) under terms and conditions as the Board sees fit. (e.g. DMD – Planning; DMD- Finance and Administration; DMD – Engineering & Operations)

Note from MD: we should consider renaming the senior positions to fall in line with the routinely used nomenclature of the PAL: CEO, COO, CPO, CFO, etc.

Discussion: The provision of section 14. (2) for the Board to "determine the executive, management and administrative structure of the Authority" is considered appropriate and adequate. There should no statutory prescription beyond the head (Managing Director).

Desired Outcome: Removal of statutory prescription of organisational makeup of the agency save for the head which should remain as is (Managing Director).

Minutes of 1st November 2017

No further discussion.

2. Financial Provisions

Minutes of 27th September 2017

Issue: Revision NRA Law Section 19(2) to have the \$10M revenue cap imposed on the two revenue streams either increased or removed all together.

Expand Section 19 to include other revenue sources (approved by Cabinet) such as: A daily car rental surcharge collected by CIG and transfer to the Roads Fund; A tire tax apportioned based on tire size collected on tire imports by CIG and transferred to the Roads Fund; Vehicle Registration Fees collected

Discussion: There was considerable discussion on this issue.

The Board has demonstrated recently in the matter of the post-retirement healthcare benefits the manner in which it wished to see the needs of the NRA quantified and in turn its willingness to seek additional funding based on proper advice and quantification.

The Board is of the view, however, that much needs to be done to better quantify the needs of the agency from the perspectives of maintaining, upgrading and enhancing the road network. The first two areas should be reasonably quantifiable now but will require a strategic effort. The MD indicated that one such strategy to enhance the evaluation of pavements on the main roads would be to consider using non-destructive testing measures such as a falling weight deflectometer to supplement where the current PCI system might be inadequate. He was encouraged to research the cost of the equipment.

The latter (enhancing the road network) will more logically and properly be possible after the Travel Demand Model is operational.

Desired Outcome: Pending.

Minutes of 1st November 2017

No further discussion.

3. Road Encroachments

Minutes of 27th September 2017

Issues: Rescind current legislation from Section 16 of the Roads Law and create new enhanced legislation under the NRA Law;

Expand current legislation to include provisions for the protection of airspace above the surface of a public road for free and unobstructed passage of vehicles and pedestrians lawfully using the road;

Strengthen current road encroachment legislation to grant 'policing' powers to the NRA. Introduce public road manager (PRM) concept for effective enforcement of road encroachments.

Discussion: The MD reiterated that section 16 of the Roads Law should be enhanced and subsequently rescinded and transferred to the NRA Law. The enhancements should include for outcomes that will allow the authority or it's

representative to have stronger enforcement powers such as being able to issue citations for continued non-compliance penalties.

The Board considered sections 16 and 17.(2) of the Roads Law. The Board concluded that the mention sections already gave the NRA the “policing” powers to action any removal of road encroachments. The DMD shared with board samples of legislations in Singapore and other countries. Samples such as giving a timeframe to remove any vehicles that are disabled, if vehicles are not moved within the timeframe it will be at owner’s expense.

The Board concluded that it was necessary to strengthen the provisions and mechanisms to allow the NRA to collect the ‘civil debts’ for removal of encroachments as provided for in s.17.(2)(c) of the Roads Law.

Desired Outcome:

Strengthen provisions in respect of recovery of cost (civil debt) while avoiding litigation and transfer the provision to the NRA Law.

Minutes of 1st November 2017

No further discussion.

4. Statutory Undertaker Provisions

Minutes of 25th October 2017

Consideration was deferred.

Minutes of 1st November 2017

No further discussion.

5. Roadway Standards

Minutes of 27th September 2017

Issue: Legislative provisions that prescribe the use of locally or universally adopted road standards and/or codes of practice associated with design, construction, and maintenance of roadways, accesses, site development, and integrated storm water/drainage facilities.

Discussion: The MD discussed with the Board his plans for developing current road design guidelines and subdivision streets specifications. He noted that there is nothing in the Law that speaks to what those standards are and our desired outcomes from the revision would be to clearly define those standards in the substantive law our through regulation.

It should be noted that s. 20.(f) of the Roads Law provides that “ The Governor, upon recommendation by the Roads Authority, may make regulations prescribing standards for the dimensions, design, maintenance and improvement of private roads”.

The Board took note of the MD’s suggestion that there should be formally prescribed standards for all roads; not just ‘private roads’. The Board took the view that the word ‘private’ should be deleted. The onus remains on the NRA to develop the standards

which the drafting consultant could convert to the form of regulations, preferably under the NRA law.

Desired Outcome: To develop regulations prescribing standards to dimensions, design and maintenance of all roads as recommended by the NRA.

Minutes of 1st November 2017

No further discussion.

6. Roadway Lighting

Issue: Introduce legislative provisions that require the Statutory Undertakers to adopt and adhere to the NRA's roadway lighting policy that includes considerations such as lighting standards, operational standards, asset management and life cycle planning having regard to the safety benefits of lighting (i.e. crime reduction, reduction in night-time vehicular accidents, etc.

Discussion: The MD confirms there is indeed a policy in place; however, it too requires some clear definition with the law.

Desired Outcome: *We need to re-visit at next meeting.*

Minutes of 1st November 2017

No further discussion.

No further discussion

7. Storm Water Management (SWM)

Issues:

- Legislative provisions that allow the NRA to effectively implement the necessary storm water mitigation measures essential to safeguarding public roadway assets
- Legislative provisions that allow NRA to establish utility easements over privately owned lands for the purposes of storm water conveyance. This includes the establishment of drainage canals, ditches, swales, culverts, etc.

Discussion: Should powers and responsibilities for storm water management be assigned in legislation? Is the NRA best suited to assume being given these powers and responsibilities, particularly in the absence of any other agency with a more complimentary skillset to assume it? Storm water control over development is currently exercised through Planning prescribing conditions which are vetted by the NRA. Responsibility for storm water management is not prescribed in the Planning law. Enabling provisions are necessary in law; they would be supplemented by implementing provisions in regulations. NRA has draft ordinance from previous storm water study by engineering consultant and would need to prepare these regulations for consideration by the consultant.

Desired Outcomes:

- To effectively implement necessary storm water mitigation measures essential to safeguarding public safety.
- To establish the ability to acquire land, or easements over land, for the purpose of SWM under the NRA Law.

The Board reviewed the above and discussed the notes provide by the MD. The Chairman suggested that prior to seeking a statutory remit for storm water management, it would seem appropriate to engage a consultant to:

- review the work that has been done on this subject;
- identify the broad scope of work that needs to be done; and
- identify the resources which would be need, both financially and skills-wise.

The Board shared this view.

8. Transfer/Adoption of privately built subdivision road to public**Issues:**

- a) Adoption of newly built private roads
 - Legislative provisions that define a road adoption process where developers legally designate new privately constructed roads as (a road for public use) and hand over legal responsibility for the maintenance to the NRA. Certain minimum standards must be met before NRA agrees to adoption
- b) Adoption of older (existing) private roads
 - Legislative provisions whereby an existing privately built road not meeting the definition of 'private roads' under the Roads Law 2016 Revision, may be declared as a public road at the request of:
 - i. The registered owner(s) of the road parcels, or in the case of a deceased owner;
 - ii. Request of the majority of property owners fronting, adjoining, or abutting the road, or
 - iii. If the road is in such state of disrepair that it poses a serious safety hazard to road users.

Discussion:**Issue a).**

As per item 5 above, all privately owned roads would in future be constructed to NRA standards.

Unless ownership and maintenance arrangements to NRA requirements are in place, roads should vest with Crown¹.

Where ownership and maintenance arrangements to NRA requirements are in place, there is the need to secure maintenance funds (normally collected on an ongoing

¹ Do we want to set a threshold of some percentage of lots having to be sold before the transfer to Crown can be done?

basis from owners) from being used for other purposes perhaps by formal, enforceable agreement and requirement of regular audits.

Issue b).

There is the need for a mechanism to legally convert existing roads serving multiple properties (sub-divisions) from private ownership to Crown where there are no ownership and maintenance arrangements.

The parcels over which the roads lie have been designated for this use by the legal owner who has in turn been compensated for the land by the purchasers of the adjacent parcels.

The executing authority need not be the Cabinet as in the case of land being acquired under the existing provisions of the Roads Law. The authority could be delegated to the NRA, possibly subject to conditions.

Potential triggers would be:

- If the NRA has already carried maintenance, repair or upgrades to the road;
- If the road is in such state of disrepair that it poses a serious safety hazard to road users;
- If the majority of the owners of adjacent properties request the conversion to Crown ownership;

Desired Outcomes:

- Provisions to allow for the oversight of maintenance arrangements for privately owned roads to mitigate the risk of increased liabilities to the NRA by funds collected for maintenance not being unavailable if ownership and maintenance arrangements break down.
- Provision to allow existing privately owned roads serving multiple properties to be converted from private ownership to Crown.
N.B. There is the need for discretion to allow exemptions to farm roads and roads serving family-owned properties (sentimental rather than commercial sub-divisions).

N.B. There is the need for discretion to allow exemptions to farm roads and roads serving family-owned properties (sentimental rather than commercial sub-divisions).

Key issues of the Roads Law (2005 Revision) and desired outcomes include:

1. Review/Redefine Section 8 – “Right to Compensation”

Issue: Amend the wording in the Roads Law to require claims to be payable by the Cabinet rather than the Roads Authority as is currently stated.

Discussion: The Board considered section 8(1) of the Roads Law. The MD & DMD stated in the past NRA Board took the responsibility to make the decisions and handled all claims as funds were provided for this purpose. In recent years, Cabinet has retained the funding for land compensation and the Ministry the responsibility for payment of claims based on the recommendation from the NRA. The Board has not taken issue with this practise but is

cognisant of the fact that it is *ultra vires* the Roads Law. Accordingly, the Board agreed that the Roads Law should be amended to accord with the practice if the Cabinet intends to continue it.

Desired Outcomes:

- Amend the law to state that compensation is payable by Cabinet upon recommendation of the Roads Authority.

2. Public Consultation (Pre gazette) Procedures

Issue: Legislative provisions to be added to the Roads Law that allows for pre public consultative process for all new road gazettes (Section 3 Gazette). This is in line with Article 1 of the first protocol of the European Convention on Human Rights and Fundamental Freedoms.

Discussion: The Board discussed whether this item should be in the SOP or in the law. It was suggested that the NRA should establish the practice of public consultation before amending it to the Law.

Desired Outcomes: No legislative action.

3. Time limit provisions and/or falling away of dormant Boundary Plans (S. 3 Gazette)

Issue : Legislative provisions that allow for the ‘de-gazettal’ of dormant boundary plans (BP’s) established under Section 3 of the Roads Law. Time limit provisions is one option – In essence any Boundary Plan that is created and not acted upon in a period of say three (3) years would be deemed through legislation to no longer be valid. Another option is for legislation to be created which allows all or portions of the BP to be rescinded giving consideration to those sections of the BP where land compensation has been finalized.

Discussion: The DMD indicated that Land & Survey has recommended a time limit on BP’s. The Chairman stated a provision for the time bar for five (5) years automatically will fall away unless Cabinet upon the recommendation of the NRA for a further period of time.

Desired Outcomes:

- **New BP’s :** Impose a time limit on gazette (section 3 Boundary Plans) for approximately five (5) years. The inactive BP would automatically “fall away” after five years unless re-authorised by the Cabinet on the recommendation of the NRA.
- **Existing BP’s :** Create legislations to allow assertive action by Cabinet to have dormant boundary plans removed or ‘de-gazetted’ on the recommendation of the NRA.

4. Expansion of the stakeholder definitions relative to Section 3 Gazettes

Issue : Legislative provisions that expand the definition of stakeholders (i.e. those affected by road gazettes) to include not just landowners but all parties of interest e.g. leaseholders/tenants, etc. This is in line with the European Convention on Human Rights.

Discussion : The DMD advised the Board that Lands & Survey only provide notifications to the registered land/property owners and not to the leaseholders/tenants. The Board discussed section 3(1)(b) and section 8(1) of the Roads Law which defines who shall receive notifications. The Board confirmed that section 8(1) is broader than section 3(1)(b).

Desired Outcomes : The Board as suggested to amend the law to state the following :

- a) To notify the registered proprietor
- b) To notify the person having a registered interest; and
- c) And the owner on the registered proprietor to notify any one he knows by virtue with any form of agreement that also has an interest in the property.

5. Review of the constitution and duties of the Roads Assessment Committee (RAC)

Issue: A fundamental review of the RAC on the whole is recommended as case history proves the current constitution is not particularly suited to determination of complex valuation and legal issues. Key concerns include:

- i. Noted issues found with decisions made by the RAC on past cases
 - ii. The membership of the RAC needs to be re-evaluated
 - iii. Scheduling of hearings takes too long
 - iv. There is no land valuation expertise on the RAC likewise it would be difficult to have an non-conflicted land valuation expert on the RAC
- Revamp the RAC or replace it with some other legally constituted committee that may render opinions on issues related to roads compensation

Discussion : The Board reviewed and discussed section 7 of the Roads Law.

The DMD shared his communication with David Fawcitt who stated "regulations need to be created setting procedures to be followed by the dispute parties and the Roads Assessment Committee, at the moment there is nothing in accordingly procedure directions given out by RAC chair on a case by case bases." Ss.7.(4) of the Roads Law makes provision for such regulations to be enacted.

Desired Outcome: To enhance the efficiency and effectiveness of the RAC by:

- changing the requirement for the Chair to be a Magistrate to a JP with professional legal experience; and
- enacting regulations to prescribe the practice and procedures of the Committee.

E.O. Item

Minutes from 14th November 2017

The Chair shared with the Board that members of the Robert (Bobbie) Thompson family had requested a 'without prejudice' meeting with the Board for an update on the LP Hwy project as they had heard nothing more from the NRA since March 2016 when the NRA's proposals were presented to seriously affected property owners. They had confirmed that they would not be accompanied by legal or property valuation advisers.

The Chair told the Board that he had apprised Ms. Dawn Lewis of the request and she had no issue with the meeting.

The Board agreed to see the Thompson family at 11:00a on Wednesday, 08th November 2017, during its next regular meeting.

Equestrian Centre – Alberga's

The chairman shared with the Board the drafted response to Chapmans dated 27th July 2017 and 22nd September 2017 in regards to the above listed property.

The letter dated 27th July confirmed the project was spilt into two phases and there were no changes to the proposed alignment of the road as confirmed to the Albergas on 19th February 2016 in a "Project Justification Report".

The letter dated 22nd September, the Albergas invited the Board to visit their property. The board approved and has requested confirmation for the visit to take place Wednesday, December 13th at 10am. The Board is pending confirmation to this visit.

Notes :

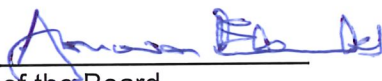
Issues that may arise as a result of the new Laws & Regulations drafted

- Depreciation Fund (or Ring-Fencing within Law)
- Emergency Operating Reserve (3 months)
- Road Construction & Design guidelines - National Standard
- Construction Specs and Sub-division Specs
- Code of Practice (Road Opening Works)
- Provision of Infrastructure for Telecom Statutory Undertakes

3. Date of next meeting

The next regular meeting is scheduled for 9:30am on 13th December 2017.

This meeting adjourned at 12:28 pm.

Signature 
Chairman of the Board
Confirmation of minutes:
Date: 14 March 2018

Signature 
Administrative & Operations Assistant
Seconded: Confirmation of minutes
Date: 14 March 2018