COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Public Law Division
Claim No. 2025/PUB/JRV/00020

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY JUDICIAL REVIEW

BETWEEN:

THE KING

AND

(1) **THE RT. HON. PHILIP EDWARD DAVIS, Prime Minister of The Commonwealth of The Bahamas**
(in his capacity as the Minister Responsible for Crown Lands)
(2) **THE HON. CLAY SWEETING**
(in his capacity as the Minister of Works and Urban Development and the Minister Responsible for Building Regulation)
(3) **THE HON. VAUGHN MILLER**
(in his capacity as the Minister of Environment and Planning and the Minister Responsible for Environmental Regulation)
(4) **THE HON. JOBETH COLEBY DAVIS**
(in her capacity as Minister of Energy and Transport, Minister responsible for Ports and Harbours and Minister responsible for Maritime Affairs)
(5) **THE HON. JOMO CAMPBELL**
(in his capacity as Minister of Agriculture and Marine Resources)
(6) **RHIANNA NEELY**
(in her capacity as the Director of Environmental Planning and Protection)
(7) **CHARLES ZONICLE**
(in his capacity as Director of Physical Planning)
(8) **THE TOWN PLANNING COMMITTEE**
(9) **SAMPSON CAY BAHAMAS LIMITED**
(10) **YNTEGRA CAPITAL LLC**

Respondents

EX PARTE

SAMPSON CAY RETREAT LIMITED

Applicant

CONSOLIDATED WITH:

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Public Law Division
Claim No. 2025/PUB/JRV/00022

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY JUDICIAL REVIEW

BETWEEN:

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AND

(1) **THE RT. HON. PHILIP EDWARD DAVIS, Prime Minister of The Commonwealth of The Bahamas**
(in his capacity as the Minister Responsible for Crown Lands)

(2) **THE HON. CLAY SWEETING**
(in his capacity as the Minister of Works and Urban Development and the Minister Responsible for Building Regulation)

(3) **KEENAN JOHNSON**
(in his capacity as Chairman of the Town Planning Committee)

(4) **THE HON. VAUGHN MILLER**
(in her capacity as Minister of Environment and Planning and the Minister Responsible for Environmental Regulation)

(5) **RHIANNA NEELY**
(in her capacity as the Director of Environmental Planning and Protection)

(6) **CHARLES ZONICLE**
(in his capacity as Director of Physical Planning)

(7) **SAMPSON CAY BAHAMAS LIMITED**

Respondents

EX PARTE

YONDER HOLDINGS LIMITED

Applicant

Before: The Honourable Mr. Justice Leif Farquharson

Appearances: Frederick Smith KC, R. Dawson Malone and Raven Rolle for the Applicant in Claim No.2025/PUB/jrv/00020

Romauld Ferreira for the Applicant in Claim No.2025/PUB/jrv/00022

Edward Fitzgerald KC, David Higgins and Adele Mangra for the 1st – 8th Respondents in Claim No.2025/PUB/jrv/00020 and for the 1st – 6th Respondents in Claim No.2025/PUB/jrv/00022

Robert Adams KC and Edward Marshall II for the 9th – 10th Respondents in Claim No.2025/PUB/jrv/00020 and for the 7th Respondent in Claim No.2025/PUB/jrv/00022

Hearing Dates: 19 December 2025 (with further post-hearing evidence laid over by the Applicants and the 9th and 10th Respondents, and further written submissions laid over by all sides, in Claim No.2025/PUB/jrv/00020)

RULING

Introduction

1. On 19 December 2023, the Government of The Bahamas entered into a Heads of Agreement ("***HOA***") with Sampson Cay Bahamas Limited ("***SCBL***")[1] to facilitate the construction and development of a "*world class unique ultra-luxury and environmentally sustainable mixed-use resort*" on Sampson Cay in the Exumas. The project is intended to be operated in partnership with Rosewood Hotels and Resorts LLC, a well-known international hotel and resort company with a focus on the luxury sector, with the project to be styled "*Rosewood Sampson Cay.*"

2. The project has generated strong opposition in some quarters. The first-named Applicant, Sampson Cay Retreat Limited ("***SCRL***"), a Bahamian company wholly owned by Mr. Robert Coughlin, a US citizen and permanent resident of The Bahamas based in Georgetown, Exuma, vigorously opposes the project. The second-named Applicant, Yonder Holdings Limited ("***Yonder***"), another Bahamian company, similarly opposes the project. Both Applicants assert a significant interest in the protection of the natural environment in the vicinity of the proposed project. In the case of SCRL, it is stated to be the owner and operator of Turtlegrass Resort & Island Club, which it describes as a "*small ecotourism resort currently being constructed on part of the Northern end of Big Sampson Cay facing North Bay.*"[2] In the case of Yonder, it is stated to be the lessee of nearby Over Yonder Cay, on which it has purportedly invested significant sums in developing and maintaining.

3. Both Applicants filed judicial review proceedings seeking to challenge the grant of Certificates of Environmental Clearance ("***CECs***") issued in favour of SCBL and to challenge other specified actions or omissions of the Respondents in connection with the project. Both Applicants also seek interlocutory injunctive relief to restrain the Developers from proceeding with any construction or preparatory works in relation to the proposed project pending the determination of their respective judicial review applications. By consent of the parties, the two sets of proceedings were consolidated.

4. This is my decision on SCRL and Yonder's applications for interlocutory injunctive relief.

Procedural Background

5. This matter has had a somewhat tortuous history. SCRL commenced proceedings by Application for Leave to Apply for Judicial Review in prescribed form on 26 August 2025. Having regard to the nature of the challenge and, in light of SCRL's request for interlocutory injunctive relief, the Court determined to hear the application on an *inter partes* basis. Directions were accordingly issued to facilitate this. The application for leave and injunctive relief was subsequently argued before me on 16 October 2025,

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[1] Referred to herein along with Yntegra Capital LLC, its subsidiaries and its principal, Felipe MacLean, as the "***Developers***".

[2] See 1st Affidavit of Jeffrey Clark Jr. filed 26 August 2025 ("***Clark 1***"), para.6

with both SCRL and the Developers filing further affidavit evidence on discrete issues after the hearing.

6. The challenge as originally framed also attacked the grant of an earlier site plan approval in favour of the Developers. The Government Respondents did not oppose leave being given to SCRL, save in respect of the challenge to site plan approval, which they argued could have been (and was at the time) the subject of an extant statutory appeal under the provisions of the *Planning and Subdivisions Act, 2010* (the "***PSA***"). The Developers, on the other hand, opposed the grant of leave in its entirety. All sides made very extensive arguments.

7. In an interesting turn of events, by letter under hand of the Developers' counsel dated 14 November 2025, the Court was subsequently informed that the Developers were no longer seeking to rely on the site plan approval that had been granted to them, which, as mentioned, was then the subject of a pending statutory appeal. The Developers also intimated that they would be applying afresh for site plan approval. This led to SCRL seeking an opportunity to revisit its pleaded case and the Respondents revisiting their position on the grant of leave.

8. The matter next came before me on 26 November 2025. On this date, SCRL confirmed that there was no need for the Court to consider its challenge to the Developers' site plan approval. The Respondents, including the Developers, indicated that they were not opposing the grant of leave but wished to be heard further in opposition to the application for injunctive relief. By this time Yonder had also entered the fray. By agreement of all parties, the two sets of judicial review proceedings were consolidated and Yonder was granted leave to apply for judicial review. Further directions were issued with respect to the filing of any further affidavit evidence and submissions in relation to SCRL and Yonder's respective applications for interlocutory injunctive relief and a hearing date of 19 December 2025 was set. In addition, and again by agreement of the parties, directions were issued to facilitate the hearing of the two substantive judicial review applications, with hearing dates being fixed for 2 and 3 March 2026.

9. SCRL and Yonder's applications for injunctive relief were subsequently argued on 19 December 2025, with the Court reserving its decision on both applications. In another turn of events, after the hearing the Developers filed a Notice of Application on 16 January 2026 seeking to reopen SCRL's application for injunctive relief. The stated basis for doing so was that newly discovered evidence suggested that SCRL had breached its duty of candour to the Court.

10. The Court resolved to determine the application to reopen the proceedings on the papers and issued directions to facilitate this. All sides thereafter laid over brief submissions addressing the same. In another turn of events, and after initially opposing the application, SCRL recently confirmed that it is no longer opposing the Developers' application to reopen.[3]

11. In the intervening period, all sides filed further affidavit evidence and submissions in relation to the substantive judicial review applications. In the lead up to the trial, both Applicants filed applications seeking extensive specific disclosure and, in the circumstances, requested an adjournment of the substantive proceedings. The Court

[3] This occurred at a hearing held on 2 March 2026.

heard the two specific disclosure applications on 2 and 3 March 2026, which were the dates set for the hearing of the substantive judicial review proceedings, and reserved its decision thereon. The applications for specific disclosure will be the subject of a separate ruling.

12. The new dates for the hearing of the substantive judicial review are in July of this year.

Decisions Under Challenge, Grounds for Review and Relief Sought

(i) SCRL's Application for Judicial Review in Outline

13. SCRL's Re-Amended Application for Leave is 83 pages in length and makes a litany of complaints about the processes followed by the Government Respondents and the Developers leading to the issuance of the CECs, the earlier site plan approval and other actions or omissions of the Respondents. The document's central theme is that the environmental approvals and related planning process was procedurally flawed, especially due to key environmental materials not being disclosed in a timely manner, consultation being inadequate, revisions to the project not being the subject of further consultation and reasons not being given for relevant decisions. There is also a broader attempt to compel multiple public decision-makers to enforce statutory controls against the Developers.

14. The specific decisions in respect of which SCRL seeks relief by way of judicial review include:

    (i) The decisions of the Director of the Department of Environmental Planning and Protection ("***DEPP***") to grant CEC 2884 and CEC 2894 to the Developers (compendiously described by the SCRL as the "***CEC Decisions***");
    (ii) The decision of the Director of DEPP not to require "*Further Environmental Information*" to be made public or provided to SCRL prior to the CEC Decisions (described by SCRL as the "***Information Decision***");
    (iii) The decision of the Director of DEPP not to require further consultation following submission of the Further Environmental Information to DEPP and/or prior to the CEC Decisions (the "***Further Consultation Decision***");
    (iv) The failure of the various Government Respondents to take enforcement action against the Developers in exercise of the statutory powers entrusted to them (collectively described as the "***Enforcement Decisions***").

15. The stated grounds of challenge as it relates to the CEC, Information and Further Consultation Decisions include:

    (i) Procedural impropriety and/or unfairness in the consultation process. In this regard, SCRL relies on provisions of the *Environmental Impact Assessment Regulations* ("***EIAR***"), common law principles derived from *Coughlan*[4] and the doctrine of legitimate expectation. The specific complaint is that DEPP and/or the Developers –
        (a) failed to ensure that all material documents and information were made available to the public as soon as practicable following their submission to

[4] See *R. v. North and East Devon Health Authority, Ex parte Coughlan* [2001] QB 213

DEPP or at all prior to the CEC Decisions, including the Developers' Environmental Impact Assessment ("***EIA***"), Environmental Impact Assessment Revised Version 2 ("***EIA R2***"), Environmental Management Plan ("***EMP***") and Environmental Management Plan Revision 1 ("***EMP R1***");

(b) provided insufficient information to consultees to enable them to participate meaningfully in the consultation process;

(c) failed to carry out further consultation as warranted, including after the Developers provided additional information and introduced material changes to the proposed development;

(d) failed to comply with the notice requirements laid down in Regulation 6 of the EIAR;

(ii) The Director of DEPP had before her inadequate information to make an informed and lawful decision as to whether to issue the CECs;

(iii) Lack of reasons for the decisions to issue the CECs;

(iv) Irrationality;

(v) Ultra vires.[5]

17. The stated grounds of challenge as it relates to the Enforcement Decisions include:

(i) Unlawfulness arising from the respective decision-makers' refusal to take enforcement action against the Developers in abrogation of their duties to enforce compliance with statutory obligations, failure to take any decision to exercise their respective statutory powers and/or taking a decision not to exercise their respective statutory powers;

(ii) Irrationality;

(iii) Ultra vires;

(iv) Abuse of discretion.

18. Within each of the main grounds for judicial review are numerous sub-grounds or complaints.

19. By way of relief, SCRL seeks various declarations confirming the unlawfulness of the processes leading to the issuance of the decisions under challenge and certiorari. It further seeks orders of prohibition preventing different Government Respondents from continuing with the assessment of the Developers' CEC application(s) in the absence of SCRL (a) being afforded an opportunity to inspect and obtain specified information, and (b) being given adequate time and an opportunity to make meaningful representations. SCRL also seeks orders of mandamus requiring different Government Respondents to assess the Developers' CEC application(s) afresh and in conformity with applicable requirements of fairness and lawful decision-making, and to compel different Government Respondents to comply with their duties to enforce, or to properly exercise their discretion to enforce, provisions of various statutes within their remit.

20. As discussed, SCRL also seeks an interlocutory injunction restraining the Developers from proceeding with any construction or preparatory works pending the determination of the judicial review application.

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[5] See SCRL's Re-Amended Application for Leave to Apply for Judicial Review, paras.144-172

(ii) Yonder's Application for Judicial Review in Outline

21. There is some overlap between Yonder's application for judicial review and SCRL's. At its core, Yonder alleges major deficiencies in the environmental review, consultation and enforcement processes undertaken in respect of the proposed development.

22. Significantly, the decisions under challenge are stated to include:

(i) "*d. the decisions taken by the 1st Respondent to allow the Development to take place on and to Crown land and (ii) to take no action to require the 6th and 7th Respondents ("the Developers" to follow the policy and procedures required under the Planning and Subdivision Act 2010 ("PSA"), the Buildings Regulation Act 1971 ("BRA"), the Environmental Planning & Protection Act 2019 ("EPPA") and the Environmental Impact Assessment Regulations ("EIA-REGS") and to cease work that is being carried out on Crown lands without the approvals and permits required under the ("PSA"), ("BRA"), the ("EPPA") and ("EIA-REGS")";*

(ii) "*e. the decision taken by the 2nd Respondent to take no action to require the Developers to cease work that is being carried out without having followed the permits under the BRA, alternatively, his breach of his statutory duty under the BRA to consider whether to exercise his statutory powers to act, with respect to the Development";*

(iii) "*f. the decision taken by the 3rd Respondent to take no action to require the Developers to cease work that is being carried out without having followed the prescribed procedural framework and mandatory sequence under the PSA, alternatively, its breach of its statutory duty under the PSA to act with respect to the Development and to follow the policy and procedures of the PSA";*

(iv) "*g. the decision taken by the 4th Respondent to take no action to require the Developers to follow the policy and procedures of the EPPA & EIA-REGS and cease work that is being carried out without having followed such, alternatively, breach of his statutory duty to promote the policy , procedures and objectives of the EPPA and EPPA-REGS to act with respect to the Development";*

(v) "*h. the decision taken by the 5th Respondent to take no action to require the Developers to follow the policy and procedures of the EPPA & EIA-REGS and cease work that is being carried out without having followed such, alternatively, breach of her statutory duty to promote the policy , procedures and objectives of the EPPA and EPPA-REGS with respect to the Development";*

(vi) "*i. The decision taken by the 6th Respondent to take no action to require the Developers to comply with the CPPLB and its policies and objectives, alternatively, his breach of its statutory duty under the CPPLB to act with respect to the Development and his breach of duty to promote the policies, objectives and procedures of the CPPLB."*[6]

23. Yonder similarly contends that the various Government Respondents decisions were irrational, ultra vires and/or procedurally unfair and seeks numerous declarations and prerogative relief. Likewise, and as discussed, Yonder also seeks interlocutory injunctive relief.

(iii) The Impugned CECs

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[6] See Yonder's Application for Leave to Apply for Judicial Review, paras.2d-i

24. CEC 2884 is under the hand of the Director of DEPP and is dated 5 June 2025. It is stated to be valid for a period of 24 months and provides environmental clearance for SCBL to carry out works associated with:

> *"....Temporary housing (man-camp), proposed nursery and maintenance area to support the road work and geotechnical studies activities...."*

25. CEC 2894 is also under the hand of the Director of DEPP and is dated 23 June 2025. This is stated to be valid for a period of 36 months and provides environmental clearance for SCBL to carry out works associated with the major components of its project, namely:

> *"....Construction activities include* (sic) *land clearing, excavation, dredging, land reclamation/filling, land grading and installation of infrastructure...."*

Affidavit Evidence of the Parties in Summary

(i) SCRL's Affidavit Evidence

26. SCRL has filed a massive volume of affidavit evidence in support of its application, with filings continuing right up until days before this Ruling. This is comprised of large amounts of scientific or technical material highlighting alleged deficiencies in the Developers' EIA, EMP and related documents, and addressing the environmental risks associated with various aspects of the project. It also consists of information addressing alleged defects in the consultation and related processes followed by the Respondents in the decision-making with respect to the CECs and the performance of other statutory or public duties. At this stage, I only propose to provide a very broad summary of SCRL's affidavit evidence, with particular focus on the facts directly necessary for the disposal of the application before me.

27. In his first affidavit, Jeffrey Byron Clark, Director and CFO of SCRL and CFO of Turtlegrass Resort Ltd., provides background information about Turtlegrass Resort & Island Club ("***Turtlegrass***"), which he says is under construction on the Northern end of Big Sampson Cay facing North Bay and will be operated as a "*high-end, low density, environmentally sustainable resort.*" He explains that East Sampson Cay is currently uninhabited and comprises 124 acres of Crown land. He states that the proposed project which is the subject of these proceedings will occupy substantially the entirety of East Sampson Cay and will devastate the ecosystems and habitats of the cay and its surrounding waters. To provide more perspective, he explains that Sampson Cay comprises Big Sampson Cay and East Sampson Cay and that the northern ends of Big and East Sampson Cays open on to a large, shallow bay crossed by strong currents, which he describes as "*North Bay*". He explains that Turtlegrass is located on the northern end of Big Sampson Cay facing North Bay. He expresses particular concern for the corals, seagrass beds and biodiversity which stand to be impacted by the proposed development, especially in North Bay.[7]

28. Mr. Clark highlights aspects of the Developers' proposed project which give rise to exceptional concern, including the construction of a service dock, a jetty or sea wall,

[7] Clark 1, pp.5-7

marina basins, docks and entrance channels, all of which he maintains will cause severe, permanent harm to the marine habitats of Sampson Cay. He points out that the areas in North Bay which the Developers propose to dredge include pristine coral, seagrass beds and conch nurseries.[8]

29. Mr. Clark states that the Developers have already arranged for the transportation of heavy equipment to East Sampson Cay and commenced the clearance of areas of vegetation near the proposed South Marina site. He expresses grave concerns as to the scale of the proposed development. He claims that the dredging, excavation, increased marine traffic, marine pollution and liquid waste produced by a development of this scale would cause enormous and irreversible harm to the ecosystems and habitats of Sampson Cay.[9]

30. Mr. Clark also makes a barrage of criticisms of the consultation process followed by the Respondents and leading to the issuance of various CECs in favour of the Developers. In this vein, he asserts that on 8 October 2024 DEPP issued CEC 2400A, which related to geotechnical investigations. He says that the public was not informed of this CEC at the time and SCRL did not learn of its existence until 22 July 2025. No opportunity was therefore afforded for public consultation prior to its issuance.[10] He also refers to numerous deficiencies in the Developers' Public Consultation Report dated 19 November 2024 and prepared by its environmental consultants, BRON Ltd. ("***BRON***").

31. Mr. Clark further complains that the Developers' second revised EIA ("***EIA R2***"), though dated 19 March 2025, was not made public at the time and that SCRL only learned of its existence on 22 July 2025 – which was *after* CECs 2884 and 2894 had already been granted on 5 June 2025 and 23 June 2025, respectively. He complains that EIA R2 incorporated a number of changes to the proposed development, including as it relates to the location of the service dock and the length of the sea wall.[11]

32. He also asserts that the Developers' document entitled "*Environmental Management Plan Revision 1*" ("***EMP R1***"), though dated 16 May 2025, only became known to SCRL on 22 July 2025. He complains that EMP R1 incorporates yet further changes to the proposed development and differs from EIA R2 in important respects, including again as it relates the length of the sea wall and the construction of a "*spur groyne*". He also asserts that the dredging information in connection with construction of the service dock as depicted in Appendix A2 of EMP R1 differs from the dredging information stated elsewhere in EMP R1, with the plans in Appendix A2 seemingly requiring a greater volume of dredging. He goes on to add that, as far as he is aware, no version of the Developers' EMP was made public prior to approval of CECs 2884 and 2894.[12]

33. Mr. Clark also refers to various pre-action letters issued by SCRL's attorneys to different Government Respondents seeking further information, most of which went unanswered and unacknowledged.

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[8] Clark 1, pp.19-20
[9] Clark 1, pp.19-20
[10] Clark 1, p.26
[11] Clark 1, pp.29-30
[12] Clark 1, pp.31-32

34. In Section D of his first affidavit, Mr. Clark makes extensive criticisms of the information presented to consultees and to DEPP in relation to the proposed development. Many of these are derived from a report commissioned by SCRL from Smith Warner International Ltd., a leading coastal engineering design-and-build firm in the Caribbean. In this regard, he complains that the information provided (among other things): contains inadequate and inaccurate information in EIA R1 regarding the impact of the proposed development on North Bay; contains no proper analysis of alternative options for the siting of the service dock; fails to disclose the extent of dredging required in North Bay for access to the service dock in the location proposed by the Developers; fails to present adequate analysis of the effect of silt, sand and tidal flows in North Bay; fails to provide any analysis of the effect of a sea wall on North Bay; fails to acknowledge the requirement for maintenance dredging on an ongoing basis; and fails to present any adequate assessment of the environmental impacts of the new service dock location.[13]

35. Finally, Mr. Clark discusses the effect of the proposed development on the SCRL's own plans for the completion of Turtlegrass. He notes that the projected expenditure to complete Turtlegrass is in excess of $70 million. He observes that the Government never formally informed SCRL of its decision to grant Crown land immediately adjacent to the west and to lease Crown land immediately to the east of Turtlegrass to another developer. According to him, work on the Turlegrass project is now on an indefinite hold due to concerns over the encroachment and potential environmental impact of the proposed development. The resulting delays have allegedly created significant adverse financial impacts for SCRL. He says that the dredging of North Bay will force SCRL to cease all construction of Phase I of Turtlegrass. This will also serve to jeopardise the employment of the Turtlegrass construction crew, which is currently made up of 30 Bahamians primarily from the Exuma region.[14]

36. Mr. Clark swore a further five affidavits in support of the application for injunctive relief before the hearing on 19 December 2025. He also swore several additional affidavits after the hearing. These were not as expansive as his first affidavit and were, for the most part, intended to address discrete issues in support of SCRL's application for leave, to rebut statements or allegations contained in the Respondents' affidavit evidence and/or to catalogue various activities observed at the development site, which he deemed to be unlawful and/or potentially harmful from an environmental standpoint. Some of the affidavits were also prepared prior to certain procedural developments in the course of the litigation, including the Developers' withdrawal of their previous application for site plan approval, the consequent lapse of SCRL's earlier appeal against site plan approval (and resultant lapse of the statutory stay of site plan approval pending such appeal) and the changed positions of the parties on the grant of leave.

37. A full discussion of these affidavits is not necessary at this juncture. It should also be noted that many of the statements contained in Mr. Clark's various affidavits, and SCRL's affidavit evidence in general, are fiercely disputed by the Respondents, especially by the Developers. This has generated multiple rounds of affidavits by these two factions, right up to the present day.

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[13] Clark 1, pp.41-65

[14] Clark 1, pp.65-66

38. In his most recently filed affidavits, Mr. Clark emphasised the heightened need for urgent injunctive relief. His later affidavits also repeat the running themes of shifting designs in the Developers' plans, an unfair consultation process with respect to the CECs, lack of transparency on the part of the Government Respondents, unreliable or omissive information in relation to critical environmental issues, and preliminary works undertaken by the Developers outside the parameters of the CECs and with no other lawful approvals.[15]

39. In his sixth affidavit, Mr. Clarke importantly confirms that Mr. Robert Coughlin, the beneficial owner of Turtlegrass, is willing to stand behind any cross-undertaking in damages should the Court deem this appropriate. Beyond this, he states that Turtlegrass itself is also capable of giving an undertaking in damages. His evidence on this issue is worth setting out:

> *"90. Mr. Coughlin, who is the beneficial owner of Turtlegrass, is the founder of Paycor, Inc. (NASDAQ: PYCR), a U.S.-based payroll and human capital management software company that has undergone multiple significant liquidity event transactions, including a recent all-cash acquisition valued at approximately $4.1 billion. As Paycor's founder and long-time senior executive, Mr. Coughlin was a substantial beneficiary of these transactions and is, based on publicly available information and reasonable financial inference, a high-net worth individual with access to material personal and investment resources. He has both the financial capacity and the willingness to stand behind any cross-undertaking in damages given by Turtlegrass in favor of Yntegra, should the Court deem such a cross-undertaking appropriate. He is willing to do so because the preservation of Sampson Cay and the vision of Turtlegrass is important to him, and notwithstanding Turtlegrass's position that Yntegra has not suffered, and will not suffer, any compensable damage as a result of the injunction in circumstances where it may not lawfully proceed with any work on the Development unless and until it has all the necessary permits and approvals. In addition, and quite apart from Mr. Coughlin, Turtlegrass is financially sound. It is the owner of Sampson key* [sic] *which is worth many millions and has already spent approximately $17 million in infrastructure investment at Sampson key* [sic]*, and thus, is itself capable of giving an undertaking in damages if appropriate."* [Emphasis supplied]

40. SCRL has also placed before the Court affidavits from Daniel Davis,[16] an employee of SCRL currently residing on Sampson Cay, and Saha Wallace-Whitfield,[17] a Pupil at Callenders & Co. Mr. Davis' affidavit serves to document various activities of the Developers at the project site observed in October of 2025. Ms. Wallace-Whitfield's affidavit serves to update the Court on certain developments in the planning process in respect of the project, including the Town Planning Committee's grant of preliminary support for the Developers' renewed application for site plan approval on 25 March 2026.

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[15] See e.g. 6th Affidavit of Jeffrey Clark Jr. ("***Clark 6***"), paras.16-47

[16] See Affidavit of Daniel Davis filed on 17 October 2025

[17] See Affidavit of Saha Wallace-Whitfield filed on 31 March 2026

(ii) Yonder's Affidavit Evidence

41. Yonder's application for injunctive relief is supported by an affidavit sworn to by Darla Toleffson, its President and Director, filed on 8 October 2025.

42. Ms. Toleffson indicates that since acquiring a Crown lease for Over Yonder Cay in 2007, Yonder has invested over B$148 million in developing and maintaining the property, which has been carried out with a priority on environmental sustainability and utilisation of renewable energy. She confirms Over Yonder Cay is only approximately 1,700 feet away from the challenged development. She notes that the Developers' EIA R1 identified numerous adverse impacts associated with the proposed development, such as destruction of wetlands and seagrass meadows, dredging impacts and habitat loss. She indicates that environmental experts have allegedly found EIA R1 to be fundamentally deficient, including in its failure to consider the impact of the proposed development upon neighbouring properties, lack of comprehensive mitigation strategies, inadequate information and analysis of dredging and failure to consider infrastructural impacts. She goes on to add that these concerns have not been addressed by EIA R2 or the EMP.

43. She also highlights concerns with the consultation process undertaken with respect to the Developers' earlier application for site plan approval and the applications for CECs. In this regard, she alleges that Yonder was not notified of "*any public meetings*" to consider these applications and key documents (including EIA R1, EIA R2 and EMP R1) were not published contemporaneously on DEPP's website. As a result, she asserts that Yonder was deprived of a fair opportunity to participate in the decision-making process.

44. Ms. Tollefson concludes her affidavit stating that the nature and scale of the proposed development pose an imminent threat to the ecological integrity of Over Yonder Cay and the surrounding Exuma Cays, including Sampson Cay, and urges that the grant of injunctive relief is necessary to prevent irreparable harm and to uphold the rule of law.

(iii) The Developers' Affidavit Evidence

45. The Developers' evidence opposing the grant of injunctive relief primarily came from Mr. Felipe MacLean of Miami, Florida, President and Director of SCBL and principal of Yntegra Capital LLC. Mr. MacLean swore a total of five affidavits in the action. Much of his evidence is responsive to the substantive judicial review application. It also addresses in some detail matters related to the earlier site plan approval (which, as indicated, has since fallen away) or matters arising after the hearing. At this stage, I propose once again to merely provide a broad summary of the Developers' evidence, with a focus on the facts deemed directly necessary for disposal of the immediate application.

46. Mr. MacLean's first affidavit is largely responsive to Mr. Clark's first affidavit. By way of background, he discusses the National Economic Council's (NEC) approval of the proposed project in 2023 via the Bahamas Investment Authority (BIA). He confirms that SCBL was incorporated on 15 June 2023 and on 19 December 2023 it entered into the HOA with the Government.[18] On the same date, it also entered into a Crown

[18] The HOA was subsequently amended on 21 May 2024

lease with the Minister responsible for Crown lands for 124 acres on East Sampson Cay for the location of the development. BRON was engaged as environmental consultants shortly afterwards. Mr. MacLean then goes on to discuss the environmental materials submitted by the Developers and to discuss the public consultation process, leading to the issuance of the CECs which form the subject of the current judicial review proceedings. He also points out that development works were previously stayed pursuant to Section 65 of the PSA and that the delay had caused substantial financial damage to the Developers.

47. On balance, Mr. MacLean seemingly endeavours to show that the proposed project went through a multi-stage and rigorous approvals process and that the Developers actually modified aspects of the project specifically in response to concerns raised by SCRL and other members of the public. This included changes to the marina location and configuration. He mentions that alternative locations for the service dock were also reviewed in light of concerns expressed by Mr. Coughlin and it was determined that this be moved further from Turtlegrass, with reduced dredging requirements and reduced direct impact on the seagrass habitat.[19]

48. The documentary record in Mr. MacLean's first affidavit also speaks in detail to the environmental review sequence. It includes the various CEC applications, DEPP's request for additional studies after an April 2024 site visit, submission of the Developers' first EIA to DEPP in May 2024, BRON's submission of coastal assessment and flushing analysis reports to the DEPP in June 2024, later EIA revisions, the EMP process, the consultation process, and eventual DEPP no-objection letters and CECs.[20] It also speaks to parallel planning approvals and disputes.

49. Mr. MacLean further speaks to sustained opposition to the project from SCRL and Robert Coughlin, which he suggests is borne out of commercial rivalry given the competition likely to arise between Rosewood Sampson Cay and Turtlegrass.[21]

50. Mr. MacLean's other affidavits are not as expansive as his first. His second affidavit is responsive to the affidavit of Daniel Davis filed on 1 October 2025 and addresses allegations of land clearing and other activities at the project site. He says that nothing done at the site after the filing of SCRL's appeal against site plan approval on 26 July 2025 (which resulted in a statutory stay being imposed) involved "*any building operation, engineering or other operations in, on, over or under any land*" at Sampson Cay. He further states that the Developers' activities after the appeal did not involve additional land clearing, excavation, dredging, reclamation or other activity amounting to a material change in land use and did not result in irreversible environmental damage.

51. In his second affidavit Mr. MacLean emphasises the prejudice likely to be caused to the Developers if an injunction is granted. He asserts ongoing daily losses conservatively estimated to exceed $46,000, which is supported by a cost spreadsheet that breaks down those losses into lease payments, operational costs, non-cash amounts and outside consultant costs. He also refers to commercial risk in the event of the Developers' partner, Rosewood Hotels and Resorts, LLC, exercising its right to

[19] MacLean 1, paras.34-37

[20] MacLean 1, paras.13-46

[21] MacLean 1, para.31

terminate their agreement. He states that loss of the Rosewood brand could materially affect the proposed project's value and sales, which he suggests would entail estimated potential losses in excess of $270 million.[22]

52. Finally, Mr. MacLean raises concern that Mr. Clark in his earlier affidavits did not express any willingness on the part of SCRL to give an undertaking in damages and has provided no information as to SCRL's asset position. This, of course, has been overtaken by Mr. Clark's sixth affidavit in which he indicated a willingness to give an undertaking and discussed Mr. Coughlin's and SCRL's financial means.

53. Mr. MacLean's third affidavit is responsive to Mr. Clarke's fifth affidavit. It also serves to update the Court on the Developers' activities at the time and their plans on a moving forward basis. He confirms that the Developers' renewed application for site plan approval includes updated plans which take into account the views expressed by SCRL, Yonder and others and which modify further the plans already approved by DEPP in connection with the issuance of CECs 2884 and 2894. He says that these also propose to move the service dock further away from Turtlegrass to an area with less flora and to reduce the size of the service dock and proposed seawall, all of which will entail less dredging.[23] He further suggests that the new application for site plan approval will address concerns raised by SCRL and Yonder regarding the conduct of the earlier public consultation exercise.

54. He points out that CECs 2884 and 2894 imposed detailed and specific restrictions on the Developers. He confirms his understanding that until SCBL receives site plan approval it is unable to conduct activity that falls within the meaning of "*development*" in the PSA, which would include dredging activities and construction of permanent buildings. He further confirms that the Developers have applied for dredging permits for the service dock in North Bay and for the proposed marinas for their development; however, no such permits had been issued as of the date of his affidavit. He adds that there is no basis for assuming that the Developers would commence dredging activities without a permit unless an interim injunction is granted or that such activities, if commenced with proper approvals, will cause irreparable damage to the environment.

55. Mr. MacLean in his third affidavit indicates that the Developers wish to continue with their geotechnical investigations, which he says are a condition of the CECs and are solely for the purpose of obtaining data to assist in the design and construction of foundations for the development's buildings.

56. Mr. MacLean's fourth affidavit was aimed at showing that SCRL had not been candid with the Court (or actually misled the Court) in that its affidavit evidence stated that "*Turtlegrass has obtained approvals for its development at Big Sampson Cay*",[24] when at the time it had not obtained site plan approval. This was relied on by the Developers as a basis for reopening the hearing of the SCRL's application for interlocutory injunctive relief. It should be noted that the issues raised by Mr. MacLean in his fourth affidavit were addressed by SCRL, who has since provided voluntary disclosure of various permits and approvals in connection with its development in Mr. Clark's seventh

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[22] 2nd Affidavit of Felipe MacLean, paras.21-25, Exhibits FM2 and FM3

[23] See 3rd Affidavit of Felipe MacLean, paras.8-9 and Exhibit FM2

[24] See Clark 6, para.70

affidavit.[25] SCRL also subsequently withdrew its opposition to the Developers' application to reopen.

57. Mr. MacLean's fifth affidavit is stated to be provided in response to the eighth affidavit of Mr. Clark, which purported to show (with supporting photographic and video evidence) various activities taking place at the development site in March of this year. In this regard, he asserts that Mr. Clark's affidavit contains certain inaccurate representations.

58. The Developers have also placed before the Court two affidavits from Nicolas MacLean, of Miami, Florida, Head of Operations of Yntegra Capital LLC and SCBL.[26] Briefly stated, in his first affidavit Mr. McLean indicates that on 16 March 2026 SCBL delivered equipment to its property at Sampson Cay. This purportedly consisted of a water truck, pipes, tools, fertiliser, a greenhouse, a generator, equipment service kits, maritime and other general supplies. He confirms that the equipment is necessary to support the geotechnical investigations and studies referred to in the Developers' previous affidavits, and for future construction of a nursery for preservation of protected plants as required by the Developers' CECs. He also indicates that no activity is being conducted at Sampson Cay pending determination of the application for injunctive relief.

59. Nicolas MacLean's second affidavit seeks to rebut Mr. Clark's ninth affidavit. Mr. MacLean indicates that no development is occurring on East Sampson Cay and describes the site as "*non-active*", with only equipment and material storage, barge offloading, equipment cleaning and minor site maintenance taking place. He suggests that any assertion of "*ongoing clearing*" is not borne out by the visual record and that the videos and photographs exhibited to Mr. Clark's ninth affidavit were misinterpreted by him. He further notes that all activities at the site remain strictly within the scope of CEC 2400A, which is not the subject of challenge.

(iv) The Government Respondents' Affidavit Evidence

60. The Government Respondents placed before the Court an affidavit sworn to by Mr. Charles Zonicle, Director of Physical Planning.[27] Mr. Zonicle confirmed that there is currently no site plan approval for the proposed project. He also addressed the issue of whether "*geotechnical investigations*" constitute "*development*" for the purposes of Section 4 of the PSA. In this regard, he indicated that investigative steps necessary for seeking site plan approval are generally considered by DEPP rather than the Town Planning Committee. He further indicated that it is not uncommon for geotechnical investigations to be undertaken as preparatory work in advance and for the purposes of an application to the Town Planning Committee for approval of a proposed development.

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[25] See 7th Affidavit of Jeffrey Clark Jr.

[26] See 1st Affidavit of Nicolas MacLean filed on 17 March 2026 and 2nd Affidavit of Nicholas MacLean filed on 31 March 2026

[27] See 2nd Affidavit of Charles Zonicle filed on 18 December 2025

61. He also expressed his opinion that the drilling of boreholes for the purposes of geotechnical investigations does not amount to '*development*', albeit acknowledging that this was a question of fact and degree.

Rival Arguments in Outline

(i) SCRL's Arguments

62. Mr. Smith, KC submitted that the guiding principles applicable to its application are to be derived from *American Cyanamid v. Ethicon* [1975] AC 396, modified as appropriate for the public law element of the case, which is one of the possible "*special factors*" referred to by Lord Diplock (see *Belize Alliance of Conservation Non-Governmental Organisations v. Department of the Environment* [2002] UKPC 63). He pointed out that injunctive relief in the present case is not sought against the Government Respondents and would not therefore have the effect of restraining a public body from acting. Rather, relief is sought against private parties (i.e. the Developers) and merely seeks to restrain them from taking steps which they are not lawfully permitted to do at present.

63. Mr. Smith argued that there is plainly a serious issue to be tried as to the lawfulness of the decisions to grant the CECs. He also noted that leave to challenge the CECs was granted unopposed.

64. He further contended that damages would not be an adequate remedy for SCRL. In this regard, he asserted that damages are rarely considered an adequate remedy in judicial review proceedings. He also emphasised that the interests at stake in the present case concern the preservation and protection of the environment in the Exuma Cays, which is not readily vindicated by an award of damages. Conversely, he argued that any loss or damage to be suffered by the Developers (the likelihood of which he disputed, in any event, due to the absence of any permits authorising them to perform construction and associated works) would be purely financial. After some initial reluctance, SCRL agreed to provide an undertaking in damages, which Mr. Coughlin is also prepared to personally back. He therefore argued that damages in the present case would provide an adequate remedy to the Developers.

65. Mr. Smith also argued that the balance of convenience strongly favoured the grant of injunctive relief. He asserted that SCRL had a strong *prima facie* case that the CEC Decisions were unlawful; there is a compelling public interest in lawful decision-making with respect to the CECs and compliance with the statutory regime applicable thereto; the grant of interim injunctive relief will not be determinative of the proceedings, but will simply '*hold the ring*' while the judicial review proceedings remain pending; if injunctive relief is not granted, the Developers would be at liberty to begin construction before the lawfulness of the CECs is determined; the environment in North Bay is exceptionally vulnerable and ecologically sensitive; any prejudice suffered by the Developers by the grant of an injunction would presumably only consist in a short delay in the commencement of construction; and the act of dredging, in particular in North Bay, has the potential to cause irreversible harm to the environment.

66. Mr. Smith stressed that the permitting regime in The Bahamas entails a four-stage, sequential process: (i) applying for and obtaining a CEC(s); (ii) grant of "*preliminary support of application for site plan approval*" pursuant to the PSA; (iii) grant of site plan

approval under the PSA; and (iv) applying for and obtaining all other necessary permits under various other enactments. According to him, the Developers in the present case are only at the first stage in the process. On this further basis, he argued that they stood to suffer no readily discernible prejudice by the grant of interim injunctive relief.

67. He also argued that the activities observed at the project site at different intervals and recounted in SCRL's affidavit evidence were outside the scope of "*geotechnical investigations*" and done without any lawful authority, and were even carried out in breach of the statutory stay imposed during the pendency of SCRL's earlier appeal against the Developers' Site Plan Approval. He accordingly suggested that the Developers cannot be relied on to act in accordance with the law. He also suggested this was at odds with the Developers' stated intention of not embarking on any activity without all requisite permits. He further observed that the Developers have failed to offer an undertaking not to proceed with work in lieu of an injunction being granted.

(ii) Yonder's Arguments

68. Mr. Ferreira's submissions on behalf of Yonder proceeded along the same lines as SCRL's, whose submissions he also adopted. He likewise relied upon *American Cyanamid* for its statement on the governing principles to be applied in an application for interlocutory injunctive relief. He maintained that there were clearly serious issues to be tried and that injunctive relief was appropriate to maintain the status quo and prevent irreparable damage to the environment. He also asserted that financial compensation would not provide an adequate remedy to Yonder if environmental damage is sustained in the interim. Conversely, he maintained that any loss or damage suffered by the Developers would be purely financial and, at most, would consist of a "*delay…until such time as their development project comports with all applicable Bahamian law.*"

69. In the final analysis, he argued that the balance of convenience tilted heavily in Yonder's favour and supported the grant of injunctive relief pending determination of the substantive judicial review proceedings.

70. Of note, Yonder was not prepared to give an undertaking in damages as a condition for the grant of injunctive relief.

(iii) The Developers' Arguments

71. Mr. Adams, KC vigorously argued against the grant of injunctive relief. He asserted that whilst both Applicants' experts acknowledged the need for further studies to be conducted on aspects of the proposed development, none of them indicated in clear and unequivocal terms that the development would cause irreparable damage to the environment. He further maintained that evidence of such damage was particularly wanting in relation to the geotechnical investigations and associated works authorised by CEC 2400A (which is not the subject of any challenge in these proceedings) and CEC 2884. Relatedly, he submitted that the geotechnical investigations and associated works referred to did not constitute '*development*' within the meaning of the PSA and involve no material change of the Developers' land.

72. Mr. Adams also argued that the primary motive of both Applicants, and in particular SCRL, was simply to stifle commercial competition from the Developers. He said that this was revealed in Mr. Clark's first affidavit, where he lamented that the Bahamian government never formally informed SCRL of its decision to convey land on either side of the Turtlegrass property to another developer and "*did not approach* [SCRL] *with an opportunity to use this property.*"[28] Relying on observations made in the case of *R. (on the application of Noble Organisation Ltd.) v. Thanet District Council and Others* [2005] EWCA Civ 782, he said this factor required the Court to subject the Applicants' evidence and grounds of challenge to rigorous examination.

73. A recurring theme in the Developers' submissions was that they have at all times acted pursuant to and within the parameters of subsisting regulatory approvals and have no intention of carrying out any development activities without requisite approvals and permits. They emphasised that no development works were carried out when the statutory stay under the PSA was in force and that the works currently being done at the project site are purely limited to geotechnical investigations and associated works within the terms of the CECs. They maintain that the appropriate parties to determine the acceptability (or otherwise) of any works from an environmental or other standpoint are DEPP and planning bodies. On this further basis, they argued that the grant of injunctive relief is entirely unnecessary.

74. Mr. Adams also submitted that the substantive challenges of both SCRL and Yonder were "*patently weak*". He observed that Yonder's case was based solely on alleged failures by public authorities to prosecute or take other coercive action against the Developers. He also stressed that the substantive proceedings were scheduled to take place a mere three months away. This, of course, was prior to the Applicants' respective applications for specific disclosure and consequent adjournment of the substantive proceedings.

75. In the result, Mr. Adams maintained that the balance of convenience lay in favour of refusing injunctive relief. In the alternative, he suggested that if injunctive relief is to be granted, this should be on terms requiring the provision of an undertaking, which he said ought to be fortified in an amount of no less than $30 million. He contended that this figure represented an eminently fair amount in light of the Developers' evidence as to the substantial losses they would suffer by reason of delays arising from an injunction, including potential losses if Rosewood elects to terminate the parties' agreement. He suggested that fortification also be provided in the form of a guarantee from a local financial institution.

(iv) Government Respondents' Arguments

76. The position advanced by the Government Respondents was put broadly as follows:

    (i) The substantive judicial reviews are of no real merit. This weighs heavily against the grant of any form of interim relief. This is all the more so in circumstances where there is no undertaking in damages offered by either Applicant in respect of losses that would be suffered by the Developers.

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[28] Developers' Submissions dated 17 December 2025, paras.55-56

(ii) No work amounting to '*development*' for the purposes of the PSA can take place unless and until site plan approval is granted, in any event.

(iii) The matter can be reviewed at the hearing of the substantive judicial review claims, which at the time were listed to take place on 2 and 3 March 2026.

77. In developing these arguments, Mr. Fitzgerald, KC provided a brief overview of the statutory framework relating to applications for site plan approval, CECs and other permits required to proceed with development activity in The Bahamas. He also addressed the factual background leading to the issuance of the impugned CECs. Following from this, he argued that SCRL's application for judicial review is at its core a complaint that SCRL was not sufficiently consulted and that the information provided to consultees was inadequate.

78. Mr. Fitzgerald asserted that the consultation on the CECs was extensive and based on detailed information. Referring to the case of *Prineas v. Forestry Commission of New South Wales* (1983) 49 LGRA 402, he argued that the EIA in the present case identified environmental impacts sufficiently to enable meaningful consultation and that the Applicants' suggestions of "*woeful deficiencies*" was entirely misplaced. He further argued that many of the criticisms levied by the Applicants were a regurgitation of complaints made, and views expressed and considered, as part of the consultation process. He also contended that the Applicants were seeking to have the Court evaluate the merits of the of the EIA, and the competing assessments of their advisors, which is not its proper role in judicial review proceedings.

79. Mr. Fitzgerald strenuously disputed SCRL's contention that the Developers' revisions to the EIA necessitated the entire consultation process starting afresh, arguing that such a result would be unworkable and is not required by the governing legislation. He also argued that SCRL's claims that it, personally, should have been the beneficiary of greater consultation were misplaced and ignored its own significant involvement in the consultation process. He also disputed SCRL's complaint to the effect that DEPP failed to give reasons, contending that the regulatory scheme relating to CECs does not require this. He further contended that SCRL's complaint of irrationality was an unmeritorious bare assertion.

80. Mr. Fitzgerald asserted that the decisions challenged by Yonder appeared, in the main, to relate to alleged failures by various Respondents to take enforcement (or similar) action against the Developers in respect of construction work carried out at the project site without, it is alleged, the requisite permits and approvals. He contended this complaint was academic because, in the absence of site plan approval, no "*development*" work could be undertaken. On this basis, there was no need for an injunction preventing "*construction*" and dredging, as sought by Yonder.

81. Whilst acknowledging that the definition of '*development*' appearing in the PSA is a question of mixed law and fact, Mr. Fitzgerald noted that the Director of Physical Planning does not consider the drilling or boreholes for the purpose of geotechnical investigations to constitute "*development*". He indicated that support for this view can be derived from the case of *Bedfordshire County Council v. Central Electricity Generating Board* [1985] JPL 43.

82. In conclusion, Mr. Fitzgerald submitted that the planning process and the process for obtaining CECs are the subject of detailed statutory schemes, administered by

professionals with statutory responsibilities and technical expertise in areas within their remit. He contended that there was no good reason to interfere with this process and that the Court should defer to the statutory decision-makers. He also suggested that, even if site plan approval is granted, any construction work before trial would be very limited.[29] Finally, he contended that it would be wholly inappropriate to grant injunctive relief which would have the effect of interfering with the commercial rights of third parties in the absence of an undertaking in damages.

Discussion and Analysis

(i) General principles

83. All sides were in agreement that the test for the grant of interlocutory relief is that set out in *American Cyanamid v. Ethicon*, subject to appropriate modification for the public law context. This of course requires the Court to consider:

(i) whether there is a serious question to be tried;
(ii) whether damages would be an adequate remedy for loss sustained by either party pending the outcome of trial;
(iii) if there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, whether the balance of convenience lies in favour of granting or refusing interlocutory relief; and
(iv) whether there are any special factors to be taken into consideration.

84. The approach to be followed in applications for injunctive relief in public law cases specifically, was extensively discussed in *Belize Alliance of Conservation Non-Governmental Organisations v. Department of the Environment* [2002] UKPC 63. In doing so, the Board emphasised that the grant of such relief is discretionary and fact-sensitive. Their Lordships also suggested that the court should adopt the course most likely to produce a just result (or minimise the risk of injustice), especially where competing public interests and potential financial consequences are significant. In a passage which bears setting out at some length, Lord Walker explained as follows:

> *"36 The court's approach to the grant of injunctive relief in public law cases was discussed (in particularly striking circumstances) by Lord Goff of Chieveley in R v Secretary of State for Transport, Ex p Factortame Ltd (No 2) (Case C-213/89) [1991] 1 AC 603, 671–674. The whole passage calls for careful study. Lord Goff stated, at p 672, that where the Crown is seeking to enforce the law, it may not be thought right to impose upon the Crown the usual undertaking in damages as a condition of the grant of injunctive relief. Lord Goff concluded, at p 674:*
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> > *"I myself am of the opinion that in these cases, as in others, the discretion conferred upon the court cannot be fettered by a rule; I respectfully doubt whether there is any rule that, in cases such as these, a party challenging the validity of a law must - to resist an application for an interim injunction against him, or to obtain an interim injunction restraining the enforcement of the law - show a strong prima facie case*

[29] This was stated on the assumption of the trial taking place on 2 and 3 March 2026 as originally scheduled.

that the law is invalid. It is impossible to foresee what cases may yet come before the courts; I cannot dismiss from my mind the possibility (no doubt remote) that such a party may suffer such serious and irreparable harm in the event of the law being enforced against him that it may be just or convenient to restrain its enforcement by an interim injunction even though so heavy a burden has not been discharged by him. In the end, the matter is one for the discretion of the court, taking into account all the circumstances of the case. Even so, the court should not restrain a public authority by interim injunction from enforcing an apparently authentic law unless it is satisfied, having regard to all the circumstances, that the challenge to the validity of the law is, prima facie, so firmly based as to justify so exceptional a course being taken."

37 In some public law cases, such as R v Servite Houses, Ex p Goldsmith (2000) 3 CCLR 354, the issue is a straightforward dispute between a public or quasi-public body (in that case, a charity providing care services on behalf of a local authority) and citizens to whom the services are being provided. In such a case an injunction may be granted to the citizen, without any undertaking in damages, if justice requires that course. Swinton Thomas LJ took into consideration the public importance of the case, involving the closure of a residential care home; the very serious consequences for the elderly and infirm residents who would be moved from accommodation in which they were settled; their prospect of success at the full hearing; and the relatively short period for which the injunction would be in force pending the hearing of the appeal.

38 In R v Inspectorate of Pollution, Ex p Greenpeace Ltd [1994] 1 WLR 570, on the other hand, a campaigning organisation was challenging an official decision which, if stayed, would have adverse financial implications for a commercial company (British Nuclear Fuels plc) which was not a party to the proceedings. Brooke J had refused a stay and the Court of Appeal upheld this decision. Glidewell LJ said, at p 574:

"At the hearing before Brooke J no offer was made by Greenpeace to give an undertaking as to damages suffered by BNFL should they suffer any; the sort of undertaking that would normally be required if an interlocutory injunction were to be granted. I bear in mind that the judge said that he was influenced by the evidence about Greenpeace's likely inability to pay for that financial loss, but he had earlier remarked that he had not been offered an undertaking. If we were dealing with this matter purely on the material which was before the judge, I would find no difficulty at all. This was essentially a matter for the discretion of the judge."

Scott LJ said, at p 577:

"But if the purpose of the interlocutory stay is, as here, to prevent executive action by a third party in pursuance of rights which have been granted by the decision under attack, then, in my judgment, to require a cross-undertaking in damages to be given is, as a matter of discretion, an entirely permissible condition for the grant of interlocutory relief and in general, I would think, unless some special feature be present, a condition that should be expected to be imposed."

A similar approach has been taken by the Land and Environment Court of New South Wales in Jarasius v Forestry Commission of New South Wales (unreported) 19 December 1989. Some observations of Lord Jauncey of Tullichettle in R v Secretary of State for the Environment, Ex p Royal Society for the Protection of Birds [1997] Env LR 431, 440 are also consistent with the view that an undertaking in damages should normally be required, even in a public law case with environmental implications, if the commercial interests of a third party are engaged.

39 Both sides rightly submitted that (because the range of public law cases is so wide) the court has a wide discretion to take the course which seems most likely to produce a just result (or to put the matter less ambitiously, to minimise the risk of an unjust result). In the context Mr Clayton referred to the well-known decision of the Court of Appeal in Allen v Jambo Holdings Ltd [1980] 1 WLR 1252, which has had the result that in England a very large class of litigants (that is, legally assisted persons) are as a matter of course excepted from the need to give a cross-undertaking in damages. However their Lordships (without casting any doubt on the practice initiated by that case) do not think that it can be taken too far. The court is never exempted from the duty to do its best, on interlocutory applications with far-reaching financial implications, to minimise the risk of injustice. In Allen v Jambo Holdings Ltd Lord Denning MR said, at p 1257: "I do not see why a poor plaintiff should be denied a Mareva injunction just because he is poor, whereas a rich plaintiff would get it." On the facts of that case, that was an appropriate comment. But there may be cases where the risk of serious and uncompensated detriment to the defendant cannot be ignored. The rich plaintiff may find, if ultimately unsuccessful, that he has to pay out a very large sum as the price of having obtained an injunction which (with hindsight) ought not to have been granted to him. Counsel were right to agree (in line with all the authorities referred to above) that the court has a wide discretion." [Emphasis supplied]

85. In *Tegra (NSW) Pty Limited v. Gundagai Shire Council and Anor.* [2007] NSWLEC 806, Preston CJ of the Land and Environment Court of New South Wales had before him an application for interlocutory injunctive relief to restrain the holder of development consent from proceeding with sand and gravel extraction pending determination of a legal challenge to the same. Although the application was ultimately dismissed on the ground that the balance of convenience on the facts did not favour the grant of injunctive relief pending the final hearing, the court acknowledged that damages will seldom be an adequate remedy where harm to the environment may be suffered. Preston CJ put the matter thus:

> *"17 In environmental cases, where public rights under environmental statutes are being enforced, no question arises as to whether an adequate remedy in damages would be available in lieu of the grant of injunction: Williams v Homestake Australia Ltd (2002) 119 LGERA 55 at 66 [53].*
>
> *18 In environmental cases, irreparable harm does not need to be suffered by the applicant personally; harm to the environment and to the enforcement of the law will also suffice. …."*

86. The more modern formulations of the test for the grant or refusal of interlocutory injunctive relief (whether prohibitory or mandatory) suggest that the overriding consideration is to take the course likely to cause "*the least irremediable prejudice to one party or the other*" (see, for example, *National Commercial Bank of Jamaica v. Olint* [2009] 1 WLR 1405, PC, per Lord Hoffman at para.19).

(ii) Serious question to be tried

87. At the outset, I readily accept that the Court is not sitting as a planning appeal body and its role in the proceedings is confined to reviewing the lawfulness of the decision-making process leading to the issuance of the impugned CECs on conventional judicial review grounds. It is not the Court's function to evaluate the merits of the proposed development or to make scientific assessments of the Developers' EIA and other environmental and planning documents. Parliament has specifically entrusted these functions to the statutory decision-makers, including the Director of DEPP and her technical team, who are possessed of the qualifications to do so.

88. I also remind myself, however, that in these conjoined applications for injunctive relief the Court is not making a final determination as to the merits of the respective judicial review applications. It is only concerned with whether the challengers can satisfy the *American Cyanamid* and public law considerations for the grant of an interlocutory injunction to restrain the Developers pending the hearing of their challenge.

89. The EPPA by its objects is intended to (among others) protect the environment while providing for development in a way that maintains ecological integrity, and establish a mechanism for effective public participation in decision-making. Sections 5 to 7 provide for the establishment of DEPP and for the appointment of a Director of Environmental Planning and Protection. Section 11 imposes a requirement to obtain a CEC prior to commencing work on any "*project*",[30] making non-compliance a criminal offence. Section 14 importantly provides:

> *"Notwithstanding any other provision in any other law no approval or other documentary authorisation shall be granted under an enactment in respect of a project that has the potential to have an adverse effect on the environment due to its nature size complexity or location unless a certificate of environmental clearance has been issued by Director."*

90. Subsequent provisions of the EPPA address the duty of DEPP to promote environmental best practices, the protection of coral reefs, pollution control, enforcement and other matters.

91. The EIAR address the procedures for obtaining a CEC, including the circumstances under which an EIA, EMP or "*further studies*" will be required.[31] They also speak to the

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[30] This is defined in section 2 as meaning "*any development that proposes a man-made change to the environment or any ecosystem, whether for business, sports or residential purposes, including a physical project, plan, program or policy of the private sector, government or any other entity that has not yet received final approval from all the relevant agencies.*"

[31] See Reg.4(3)

obligation and process for public consultation. In this regard, Regulations 6, 8 and 9 provide:

> *"**6. Notice of submission of EIA or EMP.***
> *Once the EIA or EMP has been submitted to the Director, the project proponent shall as soon as practicable give notice in any newspaper published and in general circulation in The Bahamas stating –*
> *(a) that the consultative process in respect of a proposed project has been completed in accordance with regulation 9;*
> *(b) that an EIA or EMP has been prepared in respect of the proposed project;*
> *(c) that the EIA or EMP has been submitted to the Department for review;*
> *(d) a date, place and time where a copy of the EIA or EMP may be inspected free of charge".*
>
> *"**8. Notice of public consultation.***
> *(1) The Department shall give to the general public and interested parties, no less than two weeks notice of a consultative process to be conducted by a project proponent regarding a proposed project.*
> *(2) A notice issued under subsection (1) shall –*
> *(a) state the name of the project proponent and the area in which the proposed project is to be carried out;*
> *(b) state the date and time of the consultative process;*
> *(c) state the location of the consultative process;*
> *(d) provide a description of the project;*
> *(e) invite written comments from the general public and interested parties with respect thereto.*
> *(3) The Department shall forward all written comments received pursuant to subsection (2)(e) to the project proponent so that the project proponent may address such comments during the consultative process."*
>
> *"**9. Conduct of consultative process.***
> *(1) The mode and procedure of a consultative process shall be determined by the Department.*
> *(2) During the consultative process, the project proponent shall –*
> *(a) provide detailed information –*
> *(i) concerning the proposed project and the potential environmental, social, economic and cultural affects, including adverse effects as defined in the Act;*
> *(ii) on any possible impacts to adjacent properties and communities to the proposed project; and*
> *(iii) on any significant impacts by the proposed project to adjacent properties and communities.*
> *(b) provide an opportunity for any public concerns to be addressed*
> *(c) make a written record of all concerns raised for inclusion in the EIA or EMP consultation process.*
> *(3) The Director shall –*
> *(a) attend or nominate a representative to participate in the consultative process;*
> *(b) ensure that all comments received pursuant to regulation 8(2), have been addressed by the project proponents."*

92. In the present case, SCRL has alleged a number of defects in the consultation process undertaken with respect to CECs 2884 and 2994. These are addressed at considerable length in its Application for Leave and its various sets of submissions.[32] They include (but are not limited to): material changes in the Developers' plans, which SCRL contends necessitated further consultation; deficiencies in the Developers' EIA, such that it did not provide necessary information for proper consultation; and failures to provide consultees with all material documents required or envisioned by the EIAR and DEPP's Guidance Document.

93. I accept the force of the argument of the Respondents that the regulatory requirement under the EIAR speaks to the provision of "*detailed*" and not non-exhaustive information and that the EIAR confers power on DEPP to determine the mode and procedure of a consultative process. Nevertheless, this raises questions as to the sufficiency or adequacy of the information provided. It must also be viewed in the context of the statutory objective of effective public participation in decision-making, and the parties' seeming acceptance that the area around Sampson Cay, especially North Bay, is of particular ecological sensitivity. I would not wish to make a determination on this issue on an application for interlocutory injunctive relief.

94. I do not accept the submission (or suggestion) by Mr. Smith, KC that permission-stage arguability suffices to establish a '*serious question to be tried*' for the purposes of the grant of injunctive relief (see e.g. *Sharma v. Brown-Antoine* [2006] UKPC 57 for the test for the grant of leave). At same token, I am also mindful that the court is not at this stage conducting the full hearing of the substantive matter, which is yet to be argued before me.

95. In this state of affairs, I would not be prepared to dismiss this aspect of SCRL's challenge as fanciful or as having no realistic prospect of success. I am therefore satisfied that the threshold of establishing a serious question to be tried is met by SCRL, specifically as it relates to the adequacy of the consultation process carried out with respect to CECs 2884 and 2894.

96. The substantive merits of Yonder's challenge are, in certain respects, less compelling. On a close reading of its Application for Leave, the decisions under attack for the most part consist of alleged failures by Government Respondents to take enforcement (or similar) action against the Developers to secure their compliance with various statutes.[33] The evidence of the Developers is that they intend to seek all approvals required by law to facilitate completion of their project. This includes site plan approval, which is a prerequisite to proceeding with any form of "*development*". This aspect of Yonder's challenge, at this stage, appears to therefore be academic or premature.

97. Furthermore, the exercise of enforcement powers by a public authority usually involves broad, discretionary judgments taking into account factors such as policy, resources and the public interest. As a practical matter, there is often some judicial reluctance to interfere with such decisions. It is generally not the Court's task to engage in a merits assessment of the decision whether to take enforcement action. In the present case, it is not entirely clear how each of the named Government Respondents strayed outside

[32] See e.g. SCRL's Re-Amended Application for Leave, pp.61-68

[33] See Yonder's Application for Leave to Apply for Judicial Review, paras.1d-i

the lawful bounds of their discretion in the exercise of any enforcement powers, or that their enforcement powers were actually engaged.

98. There is also a complaint that the Prime Minister failed to consult with respect to the exercise of his powers under section 54 of the *Conveyancing and Law of Property Act*. This section merely confirms that the powers previously exercisable by the Governor of the former Colony of the Bahama Islands with respect to Crown land are now vested in the Minister responsible for Crown Lands, who is the Prime Minister. The section does not impose an express obligation to consult the general public, or Yonder in particular, on the exercise of the Minister's powers thereunder.

99. Yonder does, however, allege numerous defects in the consultation process. They have also adopted SCRL's submissions. For the same reasons, I would be prepared to accept that they likewise meet the threshold of establishing a serious question to be tried on this issue.

(iii) Adequacy of Damages

100. In the present case, SCRL and Yonder seek relief by way of judicial review to prevent apprehended breaches of the planning and environmental laws of The Bahamas. They both maintain that in the absence of interlocutory relief being granted, irreversible damage will be suffered by the environment in and around Sampson Cay. The Turtlegrass property is also in extremely close proximity to the project site and to the proposed works; in particular, those to be carried out in North Bay. Monetary compensation would not provide an adequate remedy in the event of such damage being sustained.

101. Conversely, the Developers are seeking to build a resort. Any losses sustained by them by reason of injunctive relief being granted would be largely financial. SCRL has offered to give an undertaking in damages, supported by a guarantee from its beneficial owner. Damages would therefore *prima facie* provide adequate redress for the Developers as it relates to SCRL's application. This did not seem to be seriously disputed.

102. On the other hand, Yonder has offered no undertaking. Accordingly, damages would not provide adequate redress for the Developers if injunctive relief is issued in Yonder's favour.

(iv) Balance of Convenience

103. The factors affecting the balance of convenience vary from case, as does the relative weight to be attached to them.[34] In the present case, the Government of The Bahamas has determined that the proposed project will be of significant benefit to The Bahamas and to the Exumas in particular. DEPP, as the statutory authority with responsibility for vetting such developments from an environmental standpoint, has approved the project and issued CECs in favour of the Developers. These factors augur against the grant of injunctive relief.

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[34] See *Cyanamid*, p.511a

104. The grant of injunctive relief also has the potential to cause very substantial prejudice to the Developers. They would have been entitled to assume that the impugned CECs were lawful and to order their affairs on this basis. Mr. MacLean indicated that delays in the start up of the Developers' business has caused them significant financial losses, which (as of 24 November 2025) he conservatively estimated to exceed $46,000 per day. Beyond daily operating costs, he also refers to commercial risk in the event of the Developers' partner, Rosewood Hotels and Resorts, LLC, exercising its right to terminate their agreement.

105. There may be some merit to Mr. Smith's contention that the losses alleged by the Developers may be overstated insofar as the CECs themselves simply confirm that DEPP has no objection to the development, and further permits are still required to proceed with major components of construction (e.g. site plan approval, building permits, dredging permits). In addition, the agreement entered into with Rosewood cannot fetter the discretion of the various public bodies responsible for issuing permits and approvals,[35] and would presumably be subject to the Developers obtaining all necessary approvals. However, with CECs in hand, it is not unreasonable to assume that further steps would be taken to move the project to the next phases, and that costs would be incurred in that process.

106. In addition, third party interests of non-parties are engaged. I have already referred to the contract entered into with Rosewood Hotels and Resorts LLC. The Developers confirm that they have also hired consultants and other staff (albeit, as of the present date, they do not appear to have site plan approval).

107. These factors, in my view, all point against the grant of injunctive relief. Mr. Adams also referred to possible competitive concerns. Mr. Smith downplayed the suggestion, indicating that Turtlegrass was intended to be operated as a small, eco-resort targeted at a different segment of the market. On the limited information before me, I would not be prepared to accept that SCRL's and Yonder's opposition to the project is driven purely by commercial concerns. I have nevertheless taken this possibility into account.

108. I have also considered Mr. Adams' observation that SCRL seemingly commenced construction of Turtlegrass without site plan approval. This appeared to be an appeal to equitable considerations to further justify refusing injunctive relief. Since the point was raised, however, SCRL has disclosed on a voluntary basis a number of permits and approvals relating to the construction of Turtlegrass, including site plan approvals. It also provided an explanation of the administrative processes leading to the issuance of its site plan approvals.[36] In any event, I am mindful that the issues to be determined in the current proceedings relate to the lawfulness of the Developers' CECs, not SCRL's site plan approval. I would not therefore attach much weight to this particular point.

109. I have also considered the relative strength of the parties' cases. Although established to the standard of a '*serious question to be tried*', I do not regard the Applicants' case at present to be particularly strong.

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[35] See e.g. *Save Guana Cay Reef Association Ltd. v. R. and Ors.* [2009] UKPC 44,

[36] See Affidavit of Jeffrey Clark Jr. filed 26 February 2026

110. Against this, there are a number of compelling factors which in my view tilt the balance in favour of the grant of relief. First, if some form of interim relief is not granted the impugned CECs will likely continue to be acted upon while they are the subject of a subsisting challenge. As Mr. Smith points out, if site plan approval and other approvals are granted in such circumstances, there would be nothing to restrain the Developers from carrying out dredging and other work while the substantive judicial proceedings are being ventilated. This could result very significant and irreparable alterations to the environment, in an area which all sides appear to acknowledge to be of exceptional ecological sensitivity. I have therefore attached significant weight to fact that the Applicants are asserting rights to protect against possible harm to the environment.

111. SCRL has also offered an undertaking in damages as a condition for the grant of injunctive relief. Mr. Smith further confirmed that they are not opposed to fortification in a reasonable amount, albeit not the $30 million suggested by Mr. Adams. I have attached considerable weight to this factor, as it potentially provides some measure of protection to the Developers for any financial losses arising from the grant of an injunction. I also cannot ignore that, although the Developers have confirmed that they do not intend to carry out any activities at the project site without lawfully required permits, they have not offered an undertaking not to proceed whilst the challenge to the CECs is heard.

112. I have also considered the potential duration of any injunction and the time before the hearing. The trial of the substantive judicial review proceedings is now to be held in July of this year, and I would certainly not wish for any injunction to last much longer than this without safeguards in place to further protect the interests of the Developers. In the interim, however, significant damage could be suffered to the environment should the Developers obtain other permits and proceed with construction, especially dredging. The refusal of relief may also result in further legal proceedings being taken by the Applicants to challenge subsequent permits, essentially with a view to preserving their challenge to the CECs. I do not regard this as desirable.

113. Taking all of these factors into account, and giving them appropriate weight, I consider that the balance of convenience favours the grant of some form interlocutory injunctive relief in favour of SCRL. In terms of its scope, I am not persuaded that the injunction need necessarily restrain work undertaken (or to be undertaken) in connection with the activities referred to in CEC 2884. This appears to consist largely of preparatory work or studies. I would also not be prepared to restrain all of the works contemplated by CEC 2894 and would confine any order to dredging activity and the works contemplated to be done within North Bay, which appears to be the most objectionable aspect of the project from the Applicants' standpoint.

114. I am also only prepared to grant injunctive relief to SCRL on terms appropriately tailored to afford some protection of the Developers' interests, including the provision of a cross-undertaking and fortification. This would appear to be the course likely to cause "*the least irremediable prejudice.*"[37]

115. I do not accept that the balance favours the grant of injunctive relief in favour of Yonder, particularly in the absence of an undertaking in damages.

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[37] *National Commercial Bank of Jamaica v. Olint*, para.19

(v) Fortification

116. The parties did not address me extensively on this issue. The relevant principles to be applied in determining whether fortification of an undertaking in damages is appropriate were summarised by Briggs J. in *Harley Street Capital Ltd. v. Tchigirinsky* [2005] EWHC 2471, who suggested:

(i) where fortification is sought, the court is required to make an intelligent estimate of the likely amount of the loss;
(ii) it is for the applicant for fortification to show a sufficient level of risk of loss to require fortification;
(iii) loss will not qualify for compensation under the cross-undertaking unless it has been caused by the grant of the injunction (this issue normally falls to be determined on an enquiry as to damages at the end of the day, however, causation must also be examined in forming an intelligent estimate of likely loss at the fortification stage).

117. The process of determining an appropriate amount by way of fortification does not always lend itself to mathematical precision. The evidence of the Developers is lacking in detail as what specific losses would flow directly from the grant of injunctive relief. The full agreement with Rosewood Hotels and Resorts, LLC is also not before the Court. On the other hand, I do not accept Mr. Smith's suggestion that no losses would arise because the Developers do not at present have all approvals in hand to proceed with every aspect of the build-out and operation of their development.

118. In this admittedly imperfect state of affairs, I order that fortification be provided in the amount of $3 million. This is based on the figure provided by the Developers for daily operating expenses over a 60 day period, rounded upward. The other contingent losses alleged by the Developers are too speculative at this stage for me to make an intelligent estimate of them. I will also grant the Developers leave to apply for an increase in fortification while the injunction remains in force.

Disposition

119. In conclusion, with respect to SCRL's application, I Order:

(i) The Developers are to be restrained from carrying out dredging activity and works contemplated to be done within North Bay, as described in paragraph 1 of CEC 2894, pending the hearing of the SCRL's judicial review application or further Order;
(ii) This Order is made on the SCRL's undertaking in damages, which is to be fortified in the amount of $3 million. The fortification is to be provided in the form of a guarantee in the said sum from a local financial institution, the payment of the said sum into the client account of SCRL's attorneys (subject to undertakings not to deal with the funds except as directed by this Court) or in such other form as is acceptable to the Developers. Fortification is to be provided within 14 days from today's date;
(iii) The Developers shall be at liberty to apply for an increase in fortification while this Order remains in force.

120. Yonder's application for injunctive relief is dismissed.

121. I will hear from the parties further on the issue of costs.

FARQUHARSON, J.
17 April 2026