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)

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(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: 2 and 3 March 2026

RULING

Applications Before the Court

1. I recently issued a ruling addressing applications for interlocutory injunctive relief brought by Sampson Cay Retreat Ltd. ("***SCRL***") and Yonder Holdings Ltd. ("***Yonder***") in these consolidated judicial review proceedings.[1] In doing so, I discussed the factual background to the underlying claims and the procedural history of both actions, which I adopt herein.[2]

2. There are now before the Court two applications seeking orders compelling disclosure of documents. The first is brought by SCRL by Notice of Application filed on 19 February 2026. The second is brought by Yonder by Notice of Application filed on 24 February 2026. Both applications are brought pursuant to Rule 54.8 and/or Part 26 of the *Supreme Court Civil Procedure Rules, 2022* (the "***CPR***"), and/or the inherent jurisdiction of the Court.

3. The two applications are similar in many respects and seek orders compelling disclosure of documents or classes of documents identified in letters written by each Applicant to the Office of the Attorney General ("***OAG***") and Messrs. Delaney Partners shortly before the filing of the Notices of Application.[3] Both Applicants' letters to OAG seek wide-ranging disclosure of 69 listed documents or classes of documents from the Government Respondents. SCRL's letter to Delaney Partners seeks wide-ranging disclosure of 29 listed documents or classes of documents from the Developers. Yonder's letter to Delaney Partners is not as expansive as SCRL's. Inexplicably, it also contains requests for the provision of affidavits filed in the action by the Developers, which the Developers have confirmed due service of (which is not disputed).

4. Both Applicants' Notices of Application confirm, "*for the avoidance of doubt*", that the disclosure sought includes "*....all drafts, internal notes, emails, WhatsApp messages, memoranda, modelling, data, assessments, and any other material considered, reviewed, generated, or relied upon (formally or informally) by the Respondents or their consultants in connection with*:

    i. CEC 2400, CEC 2400A, CEC 2884, and CEC 2894;
    ii. the EIA, EIA R1, EIA R2, EMP, EMP R1 and EMP Terms of Reference;
    iii. the public consultation process;

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[1] See Ruling in Action Nos. 2025/PUB/jrv/00020 and 2025/PUB/jrv/00022 dated 17 April 2026.

[2] Within this ruling: "***CEC***" refers to a Certificate of Environmental Clearance; "***DEPP***" refers to the Department of Environmental Planning and Protection; "***EIA***" refers to an Environmental Impact Assessment; "***EMP***" refers to an Environmental Management Plan; "***EIA R1***" refers to the Developers' Environmental Impact Assessment Revised Version 1; "***EIA R2***" refers to the Developers' Environmental Impact Assessment Revised Version 2; "***EMP R1***" refers to the Developers' Environmental Management Plan Revision 1; "***EIAR***" refers to the *Environmental Impact Assessment Regulations*; "***HOA***" refers to a Heads of Agreement; "***NEC***" refers to the National Economic Council; "***BIA***" refers to the Bahamas Investment Authority; "***BRON***" refers to the Developers' environmental consultants, BRON Ltd.

[3] The relevant letters to OAG being dated 12 February 2026 in the case of SCRL and 18 February 2026 in the case of Yonder. The relevant letters to Delaney Partners being dated 16 February 2026 in the case of SCRL and 18 February 2026 in the case of Yonder.

iv. *dredging, hydrodynamics, sediment transport, flushing, and navigational feasibility;*
v. *the service dock location and its iterations;*
vi. *the Prime Minister's memorandum of 9 January 2024;*
vii. *BIA and DEPP site visit (2021, 2024);*
viii. *the marine habitat survey;*
ix. *geotechnical investigations;*
x. *the Site Plan Approval;*
xi. *any environmental, technical, socioeconomic, or risk assessments; and*
xii. *objections and submissions from* [SCRL, Yonder] *and any other objectors, together with all materials evidencing how those objections and submissions were actually considered, assessed, addressed or otherwise taken into consideration in the decision-making process leading to the grant of the impugned CECs and related approvals."*[4] [Underlining mine]

5. The stated grounds for relief in both Notices of Application assert that the affidavit evidence of the Respondents (i.e. the Government Respondents and the Developers) refer to numerous other documents and materials that have not been disclosed. According to the Applicants, this additional material informed the decision-making process and is essential to the determination of the lawfulness of the decisions under challenge. They maintain that the disclosure sought is proportionate, targeted and confined to documents forming part of the decision-making record. They further rely on the Second Schedule of the EIAR (which addresses the guidelines for preparation of an EIA and EMP) and the Respondents' duty of candour to buttress their applications.

6. Without further disclosure, the Applicants allege that they will be prejudiced in the presentation of their respective cases and the Court will be inhibited in the exercise of its supervisory jurisdiction with respect to the decisions under challenge.

Affidavit Evidence

(i) SCRL and Yonder's Affidavit Evidence

7. SCRL's application is supported by an affidavit sworn to by Lavar Ferguson, an associate with Messrs. Callenders & Co. ("***Callenders***"), attorneys for SCRL, filed on 19 February 2026.

8. Referring to the affidavit of Dr. Rhianna Neely-Murphy, Director of DEPP, filed on 16 January 2026, and the affidavits of Felipe MacLean of Sampson Cay Bahamas Ltd. ("***SCBL***"), filed on 23 October and 24 November 2025, Mr. Ferguson asserts that the Respondents failed to disclose core environmental and technical materials that go to the heart of the two judicial reviews. These are said to include (among others): hydrodynamic modelling; sediment transport analysis; flushing and tidal flow modelling; dredging impact modelling; navigational feasibility assessments; marine habitat surveys; benthic assessments; coral and seagrass mapping; photographic records;

[4] Both Applicants confirm that they do not seek copies of their own submissions to public bodies, but disclosure of internal records, analyses, summaries, minutes, recommendations, or other materials demonstrating whether, and in what manner, those submissions (and those of other objectors) were evaluated.

internal DEPP analyses and memoranda; documentation and communications relating to NEC approval; and communications with the Deputy Prime Minister.

9. Mr. Ferguson deposes that these materials are essential to the determination of grounds of review, such as procedural unfairness, failure to consult, irrationality, failure to take into account mandatory relevant considerations and frustration of statutory purpose. He also points out that SCRL wrote OAG and Delaney Partners, attorneys for the Government Respondents and the Developers, respectively, seeking disclosure of the documents sought on a voluntary basis before making the current application.

10. Yonder's application is supported by an affidavit sworn to by Erica Ferreira, a partner at Messrs. Ferreira & Co., attorneys for Yonder, filed on 24 February 2026. Her affidavit is in almost identical terms to Mr. Ferguson's. She likewise asserts that the documents and materials sought are essential to the determination of grounds of review and refers to letters written by Yonder seeking disclosure from the Respondents on a voluntary basis.

(ii) Government Respondents' Affidavit Evidence

11. The Government Respondents principally rely on the affidavits of Dr. Rhianna Neely-Murphy filed on 16 January and 24 February 2026 in resisting the two applications. They also filed a third affidavit of Dr. Neely-Murphy on 23 March 2026 confirming three points made at the hearing.

12. The first affidavit of Dr. Neely-Murphy was filed in response to the two substantive judicial review applications. A full discussion of its contents is not necessary for the purpose of disposing of the applications for specific disclosure. It is nonetheless worth noting that in her first affidavit, Dr. Neely-Murphy comprehensively addresses a number of key matters featuring in the judicial review challenges, including: the statutory and regulatory framework governing environmental protection in The Bahamas; the establishment and functions of DEPP; the requirement and procedure for obtaining a CEC; the process of review of an EIA, EMP and other environmental documents by DEPP; the process for public consultation under the EIAR and the purpose of such consultation; and the environmental review and consultation processes followed in relation to the Developers' applications for CECs in the instant case, culminating in the grant of CECs 2884 and 2894. In doing so, she also provides an overview of the permitting process in relation to the proposed '*Rosewood Sampson Cay*' project from its inception in 2021 to the date of her affidavit. She also addresses factually a number of the main criticisms raised in the judicial review applications of SCRL and Yonder.

13. Dr. Neely-Murphy's second affidavit was filed in response to SCRL's disclosure request by letter to OAG dated 12 February 2026. She confirms her understanding that the issues to be determined in the judicial review proceedings primarily concern the lawfulness of CECs 2884 and 2894. She expresses her view that her first affidavit was sufficient to satisfy the Government Respondents' duty of candour. Notwithstanding her stated position, and without conceding the necessity for further disclosure, she provides an additional 9 items, which she also exhibits.

14. Her third affidavit simply served to clarify three points made at the hearing on 2 and 3 March 2026. First, she confirmed that the reference to an approved EMP in CECs

2400 and 2400A[5] was made in error and that the referenced CECs should instead have referred to an "*Enabling Works Method Statement*", which was submitted by BRON on behalf of the Developers on 7 August 2024. A copy of this document (which had been produced at the hearing) was also exhibited in evidence. Secondly, she confirmed that there are no other EIAs or EMPs in relation to the project beyond those which have already been disclosed. Thirdly, she confirmed that there are no internal DEPP assessments and reports, and that the decision-making process and decisions are recorded in the CECs themselves and in the various reports and communications already before the Court.

(iii) Developers' Affidavit Evidence

15. The Developers principally rely on the affidavit of Felipe MacLean filed on 23 October 2025 and the second affidavit of Sherika Sands filed on 25 February 2026 in resisting the two applications. They also rely on a third affidavit of Sherika Sands, which was also filed on 25 February 2026.

16. Mr. MacLean's affidavit provides considerable background information on the proposed development and its progress, from approval by the NEC in early-2023 to the grant of the impugned CECs in June of 2025. Once again, a full discussion of its contents is not necessary for the purpose of disposing of the extant applications. Notably, Mr. MacLean discusses in extensive detail the Developers' interactions and exchanges with DEPP as part of the CEC approvals process and the Developers' participation in the public consultation exercise undertaken with respect to the proposed development.

17. Ms. Sands' second affidavit places on record the Developers' formal response to SCRL's attorneys' letter of 16 February 2026 seeking further disclosure on a voluntary basis. In large part, the Developers asserted that the disclosure sought was unnecessary for the fair disposition of the issues raised in the proceedings, constituted 'fishing' and was purely calculated to delay the trial of SCRL's judicial review claim. The Developers did nonetheless express willingness to disclose 8 of the approximately 29 requested documents or classes of documents, subject to qualification.

18. Ms. Sands' third affidavit is responsive to Yonder's application for disclosure. Basically, she indicates that each of the affidavits Yonder requested provision of had already been served on it and that documents relating to the grant of preliminary site plan approval by the Town Planning Committee are irrelevant and unnecessary for the fair disposition of the proceedings. Notwithstanding their confirmation of due service of earlier affidavits, out of an abundance of caution, the Developers nonetheless agreed to re-serve Yonder electronically with copies of the affidavits requested.

Discussion and Analysis

(i) Applicable Principles

[5] CEC 2400 is dated 20 August 2024 and granted environmental clearance for works to be carried out by SCBL in relation to "*Geotechnical Investigation for Proposed Project and Development and Construction of Service Dock and Jetty*". This was revoked and replaced by CEC 2400A, dated 8 October 2024, which granted environmental clearance for works to be carried out by SCBL in relation to "*Geotechnical Investigation for Proposed Project Development*".

19. Before addressing the specific requests, it is useful to make a few comments about disclosure in judicial review proceedings.

20. It is trite that the basic purpose of judicial review is to determine the lawfulness of the decision-making processes of public bodies and others exercising public functions. It is not therefore the Court's function in the present case to make purely policy decisions about the pros and cons of the proposed development or scientific assessments of the Developers' EIA and other environmental and planning documents. Rather, the Court's primary focus is on reviewing the legality of the decisions under challenge.

21. There is also a marked distinction between disclosure in judicial review proceedings and ordinary civil disclosure in private law litigation. The practice of offloading or indiscriminately dumping massive amounts of documents (sometimes of little relevance to the main issues in the case) which often plagues private law proceedings has always been strongly discouraged in judicial review. Instead, the parties are recognised as being under a duty of candour and co-operation which requires them to assist the court with full, fair and accurate explanations of relevant facts, reasoning and adverse material. A useful summary of the general nature of the duty was provided by Singh J. of the Administrative Court of England in *R. (Terra Services Ltd.) v. National Crime Agency* [2019] EWHC 1933 (Admin), where he said:

> *"14 We did not understand there to be any dispute between the parties in the present case as to the relevant legal principles. Accordingly, we can summarise them very briefly for present purposes. Disclosure is not automatic in judicial review proceedings. In this respect, judicial review differs from ordinary civil litigation (see Practice Direction 54A para.12, which confirms that disclosure is not required in judicial review proceedings unless the court orders otherwise). One of the reasons for this is that there is a quite separate but very important duty which is imposed on public authorities which is not imposed on other litigants, namely the duty of candour and co-operation with the court, particularly after permission to bring a claim for judicial review has been granted. We would observe that, again, it seems to be common ground it is not confined exclusively to cases in which permission has been granted and may well be applicable, depending on the context, at or even before the permission stage.*
>
> *15 The duty of candour and co-operation is, importantly, a duty to assist the court with full and accurate explanations of all the facts relevant to the issues which the court must decide. The underlying principle is that public authorities are not engaged in ordinary litigation trying to defend their own private interests. Rather, they are engaged in a common enterprise with the court to fulfil the public interest in upholding the rule of law. That said, the issues in judicial review proceedings are usually ones of law and not ones of fact. For that reason, it is often unnecessary for there to be disclosure of documents in the usual way as in ordinary civil litigation. Furthermore, as Lord Bingham observed in Tweed, there can be circumstances in which an application for specific disclosure rather than general disclosure of documents may be justified. Accordingly, orders for disclosure in the modern sense, that is what used to be called "discovery of documents", is rare in judicial review proceedings and in our experience is particularly rare at the pre-permission stage.*
>
> ....

> *19 ….Of course, the terms of permission, if granted, either in whole or in part, would inform any future disclosure exercise that might become necessary. Furthermore, we would stress that disclosure, in the sense of disclosure of documents, is not automatic in judicial review proceedings, even after permission has been granted. What the court normally expects to happen, if permission is granted at all, is that the defendants will then set out fully and frankly an accurate description of what has happened so far as necessary to resolve the issues in the claim for judicial review in a witness statement. Guidance was given by Lord Bingham in Tweed, in particular at para.4, as to what should happen in relation to documents. Very often, as he said, the appropriate course to take will be to exhibit the original documents rather than simply to try to summarise them. But there can be exceptions to that, for example, where confidentially* [sic] *requires otherwise."* [Emphasis supplied]

(Citing *Tweed v. Parades Commission* [2007] 2 All ER 273, at para.4, where Lord Bingham materially observed: "*Where a public authority relies on a document as significant to its decision, it is ordinarily good practice to exhibit it as the primary evidence. Any summary, however conscientiously and skilfully made, may distort. ….*) [Emphasis supplied]

22. In *Tweed*, at para.3, Lord Bingham also stated that the test for ordering disclosure of specific documents in judicial review proceedings "*will always be whether, in a given case, disclosure appears to be necessary in order to resolve the matter fairly and justly.*" This guidance was followed locally in *Save Guana Cay Reef Association Ltd. and Ors. v. The Queen and Ors.* [2009] UKPC 44, albeit that case was decided prior to the introduction of the CPR.[6] In dismissing the applicants' appeal challenging, among other things, the trial judge's decision to refuse orders for specific disclosure against the government respondents, the Board observed (at paras.46-47):

> *"The issues: discovery and cross-examination*
> *[46] The judge refused to make orders for discovery or cross-examination of some of the respondents' witnesses. He did not give reasons for his refusal, and it is regrettable that he did not give at least brief reasons. But it is apparent from the transcript that his reasons must have been that he regarded the order sought by the objectors as unnecessary and no more than a fishing expedition.*
> *[47] It is no longer the rule that disclosure should be ordered only where the affidavit evidence put in on behalf of the decision-maker can be shown to be inaccurate or misleading: Tweed v Parades Comn for Northern Ireland [2006] UKHL 53, [2007] 2 All ER 273. Nevertheless orders for discovery and cross-examination are still exceptional in judicial review proceedings, for good reason. Such proceedings are essentially a review of official decision-making, and need to be determined without any avoidable delay. On a realistic analysis the only arguable ground for judicial review in this case was the alleged inadequacy of the public consultation, a topic on which there was quite a lot of documentary evidence. The judge's refusal of orders for discovery and cross-examination were well within the scope of his discretion."* [Emphasis supplied]

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[6] *Save Guana Cay Reef Association* is cited in the commentary to CPR 54.8 in '*The Supreme Court Civil Procedure Rules, 2022 Practice Guide*' (2024), at pp.407-408.

23. I have also found the Government Respondents' summary of several of the governing principles emerging from the authorities by reference to '*The Administrative Court Judicial Review Guide 2025*' (pp.47-48 and 117), England and Wales, to be instructive. In this regard, they suggested (and I accept) that the authorities materially indicate:

23.1 A description of a document, or of a relevant event, may often be sufficient to discharge the duty of candour, without any disclosure of the underlying documents.

23.2 Where the document is significant to the decision under challenge, it will be good practice to disclose the document rather than merely summarise it, because the document is the best evidence of what it says. Where the precise terms of a document are relevant to an issue in the case, it may be difficult to comply with the duty of candour without disclosing the document.

23.3 Though disclosure may be necessary to ensure best evidence, "*It is not the supply of material whose request would constitute 'fishing'. It is not automatic disclosure of any document mentioned*": *R (Police Superintendents' Association) v. The Police Remuneration Body* [2023] EWHC 1838 (Admin) at para.18.

23.4 A public authority's duty of candour and co-operation with the Court is '*self policing*'. There is an obligation on legal representatives to ensure that it is fulfilled and it enables the court to adjudicate without deciding facts or engaging in disclosure processes: *R (HM) v. SOS for the Home Department* [2022] EWHC 2729 at para.15.

23.5 Requests for further information in judicial review should be exceptional and a court should direct that information be provided only when it is necessary to do so in order to resolve the matter fairly and justly. In deciding what is reasonably necessary and proportionate, the court may properly have regard to the fact that, in judicial review proceedings, the duty of candour applies: *R (JZ) v. SOS for the Home Department* [2022] EWHC 1708 (Admin), paras.26-28.

24. Lord Brown's warning in *Tweed* against countenancing disclosure requests which are merely '*fishing expeditions*' is also deserving of mention. He appositely observed (at para.56):

> "*...In my judgment disclosure orders are likely to remain exceptional in judicial review proceedings, even in proportionality cases, and the courts should continue to guard against what appear to be merely 'fishing expeditions' for adventitious further grounds of challenge. It is not helpful, and is often both expensive and time-consuming, to flood the court with needless paper. ....*" [Emphasis supplied]

25. In support of their applications for disclosure, in addition to relying on CPR Rule 54.8,[7] SCRL and Yonder also called in aid CPR Part 26 and/or the inherent jurisdiction of the

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[7] CPR 54.8 provides:

"*Application for disclosure, further information, cross-examination, etc.*

(1) *Unless the Court otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to a judge in chambers, notwithstanding that the application for judicial review is to be heard by a judge in open court.*

(2) *In this paragraph 'interlocutory application' includes an application for an order discontinuing the application or for cross-examination of the maker of an affidavit.*

(3) *This rule is without prejudice to any statutory provision or rule of law restricting the making of an order*

Court. No specific rule in Part 26 is identified in their respective Notices of Application. No authority was laid over to suggest that reliance on Part 26 generally or reliance on the Court's inherent jurisdiction negates the basic test for ordering specific disclosure as articulated in *Tweed* and reaffirmed in later cases.

26. Finally, it is well established that in exercising any power or discretion conferred by the CPR, the Court must seek to give effect to the overriding objective. This includes, so far as practicable, "*(a) ensuring that the parties are on an equal footing; (b) saving expense; (c) dealing with the case in ways which are proportionate . . . (d) ensuring that it is dealt with expeditiously and fairly; (e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases; and (f) enforcing compliance with rules, practice directions and orders.*"

27. Guided by these principles, I now consider the applications by SCRL and Yonder for disclosure of identified documents or classes of documents.

(ii) Challenged Decisions and Grounds for Review in Outline

28. To briefly recap, the specific decisions in respect of which SCRL seeks relief by way of judicial review include:

(i) The decisions of the Director of DEPP to grant CECs 2884 and CEC 2894 (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 (described as 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*").[8]

29. 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.[9] The specific complaint is that DEPP and/or the Developers –
  (a) failed to ensure that the following documents were made available to the public as soon as practicable following their submission to DEPP "*or at all*" prior to the CEC Decisions: (i) EIA R2; (ii) the EMP; and (iii) EMP R1;[10]
  (b) failed to ensure that the EIA and/or EIA R1 were made available to the public as soon as practicable following their submission to DEPP;[11]
  (c) provided insufficient information to permit consultees to participate meaningfully in the consultation process;[12]

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against the Crown."

[8] See SCRL's Originating Application, paras.137-143

[9] SCRL's Originating Application, para.144

[10] SCRL's Originating Application, para.146

[11] SCRL's Originating Application, para.147

[12] SCRL's Originating Application, para.148

(d) failed to carry out further or adequate consultation;[13]
(e) failed to comply with the notice requirements laid down in Regulation 6 of the EIAR;[14]

(ii) The Director of DEPP had before her "*inadequate information…to permit her to make an informed and lawful decision*" as to whether to issue CECs 2884 and 2894;[15]

(iii) Lack of reasons for the CEC, Information and Further Consultation Decisions;[16]

(iv) Irrationality in the grant of CECs 2884 and 2894.[17]

30. The stated grounds of challenge as it relates to the Enforcement Decisions allege unlawfulness by reason of the respective decision-makers' refusal to take enforcement action and/or failure to take any decision whether or not to exercise their enforcement powers.[18] SCRL maintains that this renders the decisions in question irrational, ultra vires and/or an abuse of discretion.

31. As discussed in my previous ruling, there is significant overlap between Yonder's application for judicial review and SCRL's.[19] At its core, Yonder similarly complains of a flawed consultation process, failure to enforce statutory powers and makes allegations of irrationality.

(iii) Disclosure Sought Against Government Respondents

Internal analyses, reviews and reports of DEPP

32. A large number of SCRL and Yonder's requests relate to internal reviews and analyses conducted by DEPP.[20] These include:

> *"8. All attachments and internal DEPP review notes relating to the CEC application submitted on 1 March 2024 by BRON Ltd. on behalf of Yntegra: see paragraph 27 of Neely Affidavit.*
>
> *9. All records of the 10 April 2024 site visit, including reports, photos, field notes, and internal discussions.*
>
> *….*
>
> *13. In relation to the 2 September 2024 DEPP letter: all drafts, internal DEPP notes, internal discussions, and all correspondence with BRON or the developers relating to the preparation, content, or consequences of that letter: see paragraph 35 of Neely Affidavit.*
>
> *….*

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[13] SCRL's Originating Application, paras.152-156
[14] SCRL's Originating Application, paras.157-160
[15] SCRL's Originating Application, para.161
[16] SCRL's Originating Application, para.164
[17] SCRL's Originating Application, para.165; see also paras.166 and 167 of SCRL's Originating Application for the grounds of challenge with respect to the Information Decision and the Further Consultation Decision, respectively.
[18] SCRL's Originating Application, paras.176-178
[19] See generally Yonder's Application for Leave to Apply for Judicial Review and Interlocutory relief
[20] See e.g. Callenders and Ferreira & Co.'s respective letters to OAG, paras.8, 9, 13, 15, 16, 17, 18, 23, 25, 26, 29, 31, 40, 41, 45, 47, 55, 56, 61, 62, 69

15. *In relation to the 8 October 2024 letter regarding CEC 2400A: all internal DEPP discussions, analyses, risk assessments, and communications with the developers concerning the issuance of CEC 2400A without technical reports: see paragraph 39 of Neely Affidavit.*

16. *All documents relating to CEC 2400 and CEC 2400A, including applications, supporting documents, internal reviews, correspondence, and drafts: see paragraph 39 of Neely Affidavit.*

17. *All public comments received after the 21-day consultation period, together with internal DEPP notes showing how they were considered: see paragraphs 41 and 42 of Neely Affidavit.*

18. *DEPP's internal view of the 18 December 2024 technical memo from BRON.*

....

23. *Internal DEPP review of the 29 January 2025 memorandum proposing relocation of the service dock: see paragraph 49 of Neely Affidavit.*

....

25. *In relation to the 30 January 2025 email): all internal DEPP reasoning, technical basis, modelling, assessments, and internal discussions supporting the conclusion that the northeast location was "the most feasible option," including all alternative locations considered and any documents comparing those alternatives: see paragraph 50 of Neely Affidavit.*

26. *The draft EMP submitted on 4 March 2025, including all attachments, modelling, and internal DEPP review notes: see paragraph 52 of Neely Affidavit.*

....

29. *The resubmitted revised-area documents, including attachments, modelling, and internal DEPP analysis: see paragraph 53 of the Neely Affidavit.*

....

31. *All internal DEPP communications regarding the alleged clearing.*

....

40. *All internal DEPP risk assessments, environmental risk matrices, or internal briefing notes relating to the project.*

41. *All internal DEPP discussions about the adequacy of the EIA and the decision to allow public consultation without geotechnical data.*

....

45. *Any internal communications discussing the cease and desist order or recommendations to the Prime Minister.*

....

47. *All documents showing how DEPP "reduced negative environmental impacts," including internal analyses, recommendations to the developers, developer responses, and any modelling or technical documents supporting the claimed reductions.*

....

55. *All documents relating to DEPP's decision to delay publication of the EIA until September 2024, including internal discussions, requests for additional*

information, correspondence with the developers, and any DEPP policy on publication timing.

56. *All internal DEPP interpretations, legal analyses, policies, or guidance relating to Regulation 9(2) and the requirements for public consultation.*

....

61. *All documents showing how DEPP evaluated the adequacy of information provided to consultees and within the EIA, including internal assessments, concerns raised, and any requests for additional information.*

62. *All internal DEPP technical reviews, notes, concerns, and correspondence relating to the decision to issue a "No Objection" to the EIA.*

....

69. *All documents relating to alleged inaccuracies in the developers' consultation report, including internal DEPP assessments and correspondence."*

33. Mr. Smith KC in his oral submissions emphasised the necessity for documents evidencing internal consideration and analyses of DEPP. In doing so, he suggested that either these documents must exist or from their absence it could be inferred that DEPP failed to properly apply its mind to the CEC applications, or merely rubber-stamped BRON's work. Putting aside the merits of this argument, there are four initial observations I would make with respect to this particular request as a class.

34. First, Dr. Neely-Murphy's first affidavit provides an overall picture of the decision-making process leading to the issuance of CECs 2884 and 2894. This is comprehensively addressed in paragraphs 20-63 and is supported by a very large number of exhibits referred to by her. In paragraphs 66-98 she further expands upon her explanation of the decision to issue the two CECs by addressing factually, specific criticisms of the process raised by SCRL and Yonder. The evidentiary record is therefore already very fulsome by any standard, and the Court has before it a proliferation of documents explaining the process leading to the issuance of the impugned CECs.

35. Secondly, the request appears to ignore (or attach insufficient importance to) the statutory context and the approach of DEPP to its work, as explained by Dr. Neely-Murphy (see, for example, First Affidavit of Dr. Neely-Murphy, paras.7-18). As Mr. Fitzgerald KC observed, this discloses that DEPP relies on the work of environmental consultants who DEPP itself pre-approves. The task of DEPP is to give guidance as to the issues which should be addressed by the environmental consultant, and to review its product. If DEPP is not satisfied with the adequacy of what is produced, DEPP can require further matters to be addressed. Much of this material is already before the Court, including (but not limited to) the operative EIA and EMP for the proposed project and various BRON reports and memoranda, both in relation to design-related or scientific issues and in relation to the consultation exercise.

36. Thirdly, in her second affidavit, Dr. Neely-Murphy on a voluntary basis disclosed numerous additional documents, including: a DEPP memo. to BIA dated 14 September 2021; a DEPP report to the Ministry of the Environment and Natural Resources dated 19 July 2023; draft terms of reference for the EMP submitted by BRON; the draft EMP provided by BRON; and aerial photos from a site visit by Dr. Neely-Murphy and other DEPP officials conducted on 4 June 2025. I admittedly do not see the necessity for

disclosure of some of these documents for the purpose of determining the legality of the impugned CECs. It does nonetheless support Mr. Fitzgerald's basic argument that the Government Respondents have been extremely candid in providing disclosure - in his words, "*warts and all*".

37. Fourthly, Dr. Neely-Murphy in her third affidavit confirmed that "*....there are no internal DEPP assessments and reports. The decision-making process and the decisions are recorded in the CECs, and in the reports and communications which have already been disclosed.*" On this basis, an order directing disclosure of further internal documents would appear to serve no practical purpose.

38. For the reasons already discussed, I am not prepared to order further disclosure of internal documents, analyses and reports of DEPP as requested. I am also mindful that the present judicial reviews, at their core, seek to challenge the legality of CECs 2884 and 2894. The main grounds relied upon by SCRL include procedural impropriety and/or unfairness in the consultation process, lack of reasons and irrationality. The main grounds relied upon by Yonder seemingly relate to alleged defects in the consultation processes and irrationality. On any realistic appraisal, there is already considerable information before the Court in relation to the consultation process undertaken. If there were any defects in that process, the parties are in my view well positioned to argue the same. No further disclosure of DEPP's internal documents would appear to be necessary to fairly and justly resolve this issue.

39. Likewise, no further disclosure of DEPP's internal documents would appear to be necessary to fairly and justly resolve the complaint of lack of reasons for the grant of the CECs. The resolution of this issue would likely turn primarily on a reading of the CECs against any subsisting statutory or legal obligation to give reasons.

40. In the same vein, no further disclosure of DEPP's internal documents would appear to be necessary to fairly and justly resolve the complaint of irrationality. This would likely turn primarily on an assessment of whether the decisions of the Director of DEPP to grant the impugned CECs were *Wednesbury* unreasonable in view of the material before her. Against the backdrop of the very extensive explanations and disclosure already given, no further disclosure of DEPP's internal documents would appear to be necessary to determine this issue.

41. Equally, the complaint of failure on the part of DEPP to take enforcement action does not in my view require any further disclosure of internal documents or analyses. If there was a statutory or other legal duty to take enforcement action that was not complied with, that issue should be capable of determination based on the material already before the Court, including the parties' other affidavits. Any complaint of irrationality by reason of failure to take enforcement action should similarly be capable of determination on the material already before the Court.

CEC 2400 and CEC 2400A

42. SCRL and Yonder have also made requests for disclosure of documents in relation to CECs 2400 and 2400A.[21] This includes an omnibus request for "*All documents relating to CEC 2400 and 2400A...*"

[21] See e.g. Callenders and Ferreira & Co.'s letters to OAG, paras.15, 16, 22:

43. The first observation I would make is that CEC 2400 and CEC 2400A are not the subject of challenge in the current judicial reviews. They would thus appear to be of limited relevance to the resolution of the issues arising in the two judicial review challenges.

44. Secondly, and in any event, Dr. Neely-Murphy's first affidavit referred to CECs 2400 and 2400A and explained the circumstances under which they were issued. This included details and reasons surrounding the revocation of CEC 2400 and its replacement by CEC 2400A.[22] As indicated, Dr. Neely-Murphy in her third affidavit also candidly confirmed that the reference to an EMP appearing in CECs 2400 and 2400A was in error and was intended as a reference to the "*Enabling Works Method Statement*" submitted by BRON, which has been provided. Both CECs are also already in evidence.

45. In the circumstances, I do not see the necessity for any further disclosure to be made in relation to these CECs to resolve the current judicial review challenges fairly and justly.

Other Miscellaneous Documents or Classes of Documents

46. As a result of the disclosure already given by the Government Respondents and the Developers, the Applicants have all EIAs and EMPs in relation to the proposed project. This includes the EIA on which there was public consultation. They have the record of public consultation. They also have the very full first affidavit from Dr. Neely-Murphy, in which she exhibits additional documents she relied on. They also have the very full first affidavit of Mr. MacLean, which exhibits numerous documents. The documents already disclosed, which formed part of the decision-making record, additionally include (among others): a Coastal Assessment Report; a Flushing Analysis Report; Master Plan Overlay; EIA R1 Terms of Reference; Public Consultation Report; technical memoranda relating to service-dock location; EMP Terms of Reference; and Service Dock Marine Habitat Survey. The Applicants also have all CECs. Further, Dr. Neely-Murphy in her first affidavit explains the whole decision-making process leading to the issuance of CECs 2884 and 2894 in detail.

47. In her second affidavit, without admitting disclosure to be justified, Dr. Neilly-Murphy provided copies of further documents arising from statements or references in her first affidavit. These included: a DEPP memo. to BIA dated 14 September 2021; a DEPP memo. to the Ministry of the Environment and Natural Resources dated 19 July 2023 following a site visit on 14 July 2023; draft EMP Terms of Reference submitted by BRON; draft EMP submitted by the Developers; notifications of commencement of geotechnical investigations and road-clearing submitted by BRON to DEPP on 4 March

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"15. In relation to the 8 October 2024 letter regarding CEC 2400A: all internal DEPP discussions, analyses, risk assessments, and communications with the developers concerning the issuance of CEC 2400A without technical reports: see paragraph 39 of Neely Affidavit."

"16. All documents relating to CEC 2400 and CEC 2400A, including applications, supporting documents, internal reviews, correspondence, and drafts: see paragraph 39 of Neely Affidavit."

"22. The 20 December 2024 notification of commencement of geotechnical investigations under CEC 2400A, including attachments and internal DEPP responses: see paragraph 48 of Neely Affidavit."

[22] See First Affidavit of Dr. Neely-Murphy, paras.34 and 39

2025; an incident report submitted by BRON on 19 March 2025; and aerial photos and clips from a site visit by the Director of DEPP on 4 June 2025, together with a letter to BRON the day after.

48. Based on the foregoing, all documents which were significant to the decisions to issue the impugned CECs appear to have been disclosed by DEPP. Much of the remainder of SCRL and Yonder's requests relate to broad classes of documents, including "*all documents, drafts, internal notes, emails, Whatsapp messages, memoranda, reports, assessments, modelling, data, or other materials that were considered, reviewed, generated, or relied upon (whether formally or informally) by DEPP, the Director, or any officer or consultant in connection with the Yntegra development, the CEC applications … the EIA, the EMP, the public consultation process, or any environmental, technical or socioeconomic assessment, whether or not expressly referenced in the Neely Affidavit.*" Sweeping requests are also made for (among others) "*all communications between*" DEPP and the BIA, Department of Physical Planning and the Office of the Prime Minister.[23] In my view, such requests on their face are manifestly excessive and blatant fishing expeditions.

49. SCRL and Yonder also seek specific BIA-related records and documents.[24] The BIA is not a party to the two judicial review proceedings and primarily serves as the administrative arm of the NEC and the Investments Board. I struggle to see the necessity for any further disclosure of its records for the purpose of resolving the judicial review challenges fairly and justly. Again, this appears to be a fishing expedition.

50. SCRL and Yonder further seek numerous documents which, they argue, informed BRON's reports. The affidavit of Mr. Ferguson acknowledges, for example, that the Marine Habitat Survey has been disclosed, but complains that there is "*no underlying survey data, raw files, GIS layers, drafts or consultant communications*".[25] I agree with the Government Respondents that the notion that raw files used in the production of a marine habitat survey (or similar surveys or reports) require disclosing is misconceived. A judicial review is not intended to be a re-run of the application for CEC-approval from DEPP, and the Court "*must be astute to ensure that such challenges are not used as a cloak for what is, in truth, a re-run of the arguments on the planning merits*" (see *R. (Beronstone Ltd.) v. First Secretary of State* [2006] EWHC 2391, para.13).

51. On this basis, I see no need to order disclosure of BRON's underlying survey data, modelling, or raw files. The output of that research has already been disclosed and is reflected in the documents placed before DEPP as part of the decision-making record,

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[23] See Callenders and Ferreira & Co.'s letters to OAG, paras. 37, 38 and 39:
"37. All communications between DEPP and the Department of Physical Planning.
38. All communications between DEPP and the Bahamas Investment Authority.
39. All communications between DEPP and the Office of the Prime Minister."

[24] See e.g. Callenders and Ferreira & Co.'s letters to OAG, paras.2, 3 and 4:
"2. All attachments identified in the BIA brief referenced in para. 21 of Neely Affidavit.
3. All records of the 8 December 2021 site visit by Officials of the Prime Minister's Office and BIA officials, including notes, reports, photos, and follow-up correspondence: see paragraph 21 of Neely Affidavit.
4. All materials from the January 2023 town hall meetings, including developer presentations, BIA briefing notes, DEPP notes, and documents showing the "alternatives considered" by the developers, BIA, DEPP, and DPP: see paragraph 22 of Neely Affidavit."

[25] See Affidavit of Lavar Ferguson, para.17

including the EIA itself, which contains numerous appendices and tables with detailed scientific information.

52. The Applicants also seek further information about two town hall meetings held in January 2023.[26] These preceded the statutory consultation process under the EIAR and the public meeting that was part of that process. As Dr. Neilly-Murphy explains in her first affidavit, the January 2023 meetings were BIA-informational meetings and were not legally mandated or arranged by DEPP. They were seemingly relevant to the deliberations of the NEC with respect to the approval of the development at a policy level. Given the peripheral relevance of these matters, the explanation given by Dr. Neely-Murphy would appear to be sufficient to discharge the duty of candour.

53. I similarly struggle to see the necessity for ordering further disclosure against the Prime Minister, who is joined in both actions in his capacity as Minister Responsible for Crown Lands. The decision to grant the impugned CECs is statutorily within the purview of the Director of DEPP. The public consultation process is also statutory and falls within the remit of DEPP. Any allegations of irrationality in the exercise (or non-exercise) of his enforcement powers, or any other complaints made against him, should be capable of determination based on the material already before the Court.

(iii) Disclosure Sought Against Developers

54. Many of the comments made in relation to the disclosure sought against the Government Respondents apply with greater force to the disclosure sought from the Developers, who were not the actual decision-makers. There has already been substantial disclosure given by the parties, including of all key environmental documents. The Developers have likewise filed very fulsome affidavits. Many of the requests made of them also constitute blatant fishing or, at a minimum, seek disclosure of documents which are not in my view necessary to resolve the two judicial review challenges fairly and justly.

55. These include, for instance:

> "*1. All correspondence, memoranda, submissions, briefing notes, applications, presentations, reports, or other documents submitted to, received from, or relied upon in connection with the pursuit of National Economic Council approval.*
>
> *2. All correspondence, notes, agendas, minutes, memoranda, draft proposals, or materials exchanged with or provided to the Honourable Deputy Prime Minister Chester Cooper in 2023 relating to the proposed development, including all documents used, referred to, or relied upon at any such meetings.*
>
> *3. All correspondence and communications (including emails, text messages, WhatsApp messages, or internal notes) between Yntegra and any representative of the Bahamas Investment Authority referring to:*
> *3.1 alleged communications from DEPP;*
> *3.2 alleged concerns expressed by Mr. Robert Coughlin;*

[26] See Callenders and Ferreira & Co.'s letters to OAG, para.4

3.3 the proposed marina location in North Bay." [Emphasis supplied]

56. As Mr. Adams KC rightly observed, neither the NEC, the Deputy Prime Minister or the BIA are parties to the current judicial review proceedings. No decisions made by them are under challenge. The primary focus of the judicial reviews is the decision-making process of the Director of DEPP with respect to CECs 2884 and 2894. There is also a complaint that certain Government Respondents failed to take enforcement action against the Developers. No further disclosure of correspondence exchanged with the NEC, the Deputy Prime Minister or the BIA would appear to be necessary to fairly and justly resolve these issues.

57. I am also of the opinion that the documents sought in the following requests are unnecessary to fairly and justly resolve the two judicial reviews. Many of them do not appear to have formed part of the decision-making record for the impugned CECs and/or they appear to be irrelevant to the review exercise being undertaken by the Court. A number of the requests also appear to be obvious fishing expeditions (see, in particular, the requests contained in paragraphs 17, 21, 22, 23, 24, 25, 26, 27, 28 and 29 below).

> *"6. All documents, technical memoranda, feasibility assessments, comparative analyses, modelling, or internal evaluations supporting the conclusion that "the only suitable location would be the existing internal ponds at Sampson Cay."*
>
> *....*
>
> *8. Complete incorporation documents of Sampson Cay Bahamas Limited (SCBL), including certificate of incorporation, memorandum and articles of association, register of directors and shareholders, and any amendments thereto.*
>
> *....*
>
> *11. All documents, reports, modelling, feasibility studies, environmental assessments, or correspondence constituting or relating to the "further review" which concluded that the service dock could be relocated further from SCRL's development and that dredging would be materially reduced.*
>
> *....*
>
> *17. All documents, reports, technical assessments, modelling, surveys, consultant advice, internal evaluations, and correspondence evidencing or supporting the assertion that the updated plans addressed SCRL's concerns regarding dredging activities in North Bay.*
>
> *18. All plans, drawings, geotechnical reports, consultant advice, and related correspondence concerning the design and construction of the foundations for the development's buildings.*
>
> *19. All...geotechnical reports, consultant advice, and related correspondence concerning the design, and construction of any temporary housing associated with the development.*
>
> *....*
>
> *21. All correspondence between SCBL (or its attorneys) and the Department of Physical Planning and/or the Town Planning Committee concerning whether SCRL held site plan approval, including internal memoranda or briefing notes arising therefrom.*

22. *All communications (including emails, memoranda, text messages, WhatsApp messages, meeting notes, or call logs) between Yntegra and:*
    - *22.1 DEPP;*
    - *22.2 the Department of Physical Planning;*
    - *22.3 the Bahamas Investment Authority;*
    - *22.4 the Office of the Prime Minister;*
    - *22.5 the National Economic Council;*
    - *22.6 the Department of Crown Lands;*

    concerning the proposed development by Yntegra.

23. *All documents relating to the analysis of alternative locations for the service dock, including modelling, feasibility assessments, environmental reviews, and related correspondence.*

24. *All documents relating to the marine habitat survey, including drafts, raw data, modelling outputs, GIS files, assumptions, and consultant communications.*

25. *All modelling conducted by BRON (or any other consultant) concerning, but not limited to:*
    - *25.1 dredging volumes;*
    - *25.2 sediment transport;*
    - *25.3 tidal flows;*
    - *25.4 hydrodynamic modelling;*
    - *25.5 navigational safety;*
    - *25.6 marine habitat impact;*
    - *25.7 including assumptions, input data, underlying datasets, and draft iterations.*

26. *All documents, reports, drafts, internal notes, emails, WhatsApp messages, memoranda, assessments, modelling outputs, data, or other materials considered, reviewed, generated, or relied upon (formally or informally) by Yntegra or its consultants in connection with:*
    - *26.1 the CEC applications (including CEC 2400A, CEC 2884, and CEC 2894);*
    - *26.2 the EIA;*
    - *26.3 the EMP;*
    - *26.4 the public consultation process;*
    - *26.5 any environmental, technical, socioeconomic, or navigational assessment.*

27. *All documents recording or evidencing any communication, instruction, direction, or recommendation from any Ministry, agency, or Government office concerning the Yntegra development.*

28. *All documents recording or evidencing any communication, instruction, direction, or recommendation provided by Yntegra to any Ministry, agency, or Government office concerning the development.*

29. *All documents, correspondence, applications, permits, approvals, assessments, internal memoranda, emails, WhatsApp messages, or other*

materials relating to any forestry permit, forestry approval, or authorization issued or sought in connection with the Yntegra development, including all documents evidencing consultation with or decisions by the Forestry Unit or any other relevant governmental authority." [Emphasis supplied]

58. Without conceding their necessity for the fair determination of the issues raised in the two judicial reviews, the Developers agreed (subject to qualification) to disclose 8 documents or classes of documents requested by SCRL.[27] These included specific documents falling within the following requests:[28]

> *"5. All correspondence with any representative of DEPP regarding alternative marina locations.*
>
> ....
>
> *7. The modified proposal referenced in those paragraphs,[29] including all drafts and revisions.*
>
> ....
>
> *9. The Amended* [HOA] *dated 21 May 2024, including all drafts and related correspondence.*
>
> *10. All emails, letters, written objections, submissions, and other communications received by Yntegra from members of the community concerning the proposed development.*
>
> ....
>
> *12. The colour photographs of the Service Dock Marine Habitat referenced in the 1 April 2025 letter from BRON to the Director of DEPP (pp.194 to 197 of MacLean 1), in native resolution and original format;*
>
> *13. All enquiries, correspondence, instructions, requests, or communications from DEPP to BRON concerning SCRL's marine navigation concerns, and all responses thereto.*
>
> ....
>
> *16. All email messages, correspondence, attachments, draft reports, and related communications dated 13 March 2025 and 19 March 2025 from BRON to DEPP in relation to the Environmental Monitor Report, including any responses from DEPP and any internal DEPP memoranda or notes generated as a result thereof.*
>
> ....
>
> *20. All documents submitted to, reviewed by, or approved by any governmental authority in relation to the foundation design or temporary housing, including internal memoranda, conditions of approval, and correspondence."*

59. During the hearing, Mr. Smith confirmed receipt of documents identified in paragraph numbers 10 and 12 of Callenders' letter seeking disclosure from the Developers. No order therefore needs to be made in relation to these.

60. Mr. Smith also confirmed receipt of some documents referred to in paragraph 13 of Callenders' letter. However, he submitted that disclosure was incomplete as the

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[27] See Delaney Partners' letter to Callenders dated 20 February 2026, paras. 5, 7, 9, 10, 12, 13, 16 and 20

[28] See Callenders' letter to Delaney Partners dated 16 February 2026, paras.5, 7, 9, 10, 12, 13, 16 and 20, and Delaney Partners' response thereto dated 20 February 2026, paras. 5, 7, 9, 10, 12, 13, 16 and 20.

[29] i.e., paras. 9-10 of Felipe MacLean's first affidavit

documents provided only comprised correspondence from BRON or Yntegra to DEPP and not from DEPP to BRON concerning marine navigation concerns. To the extent that such correspondence is not already before the Court, I will simply direct that the Developers produce any correspondence from DEPP to BRON in relation to concerns expressed by SCRL about marine navigation in North Bay prior to the issuance of CECs 2884 and 2894.[30]

61. Mr. Smith also indicated that, notwithstanding their stated willingness to do so, the Developers failed to produce documents outlined in paragraph number 5 of Callenders' letter or to otherwise confirm their non-existence. The issue of the alternative location of the marina aspect of the proposed development, and how this came to be moved from one location in North Bay to two internal ponds situated within East Sampson Cay, is addressed in (among others) paragraphs 9-10 of Mr. MacLean's first affidavit and paragraphs 22, 29, 31 and 96 of Dr. Neely-Murphy's first affidavit, and various exhibits referred to therein, including the EIA upon which there was public consultation and the appendices thereto. I see no need for further disclosure to fairly resolve the judicial review challenge as it relates to this issue. The question would seem to be whether the decision to approve the alternative marina location was irrational, and whether there was adequate consultation on the issue. To the extent the complaint concerning this issue is predicated on lack of reasons or some failure to take enforcement action, it would seem that this should likewise be capable of determination on the information before the Court.

62. Many of the same observations apply to the request referred to in paragraph number 7 of Callenders' letter, which also relates to the alternative or "*modified*" proposal to locate the proposed marina within two internal ponds situated on East Sampson Cay. I see no need for further disclosure to be made by the Developers to fairly and justly resolve this issue.

63. Mr. Smith further indicated that, despite agreeing to disclose their amended HOA, the Developers failed to provide the same. SCRL, the Government Respondents and the Developers all appear to refer to the Developers' HOA as part of the factual matrix to the judicial reviews, with a copy of the HOA in its original form being exhibited to the first affidavit of Jeffrey Byron Clark. The HOA, among other things, confirms the Government's approval of the proposed project in principle at a policy level. It is also potentially relevant to the economic benefits associated with the development, which is one of the factors to be taken into account in decision-making under the EPPA.[31] As far as I can tell, the amended HOA also predated the impugned CEC's and is actually referred to in the first affidavit of Felipe MacLean.[32] In light of the foregoing, I am prepared to direct the Developers to produce their amended HOA.

64. Mr. Smith also suggested that the Developers only provided partial disclosure of documents requested at paragraph 16 of Callenders' letter. As far as I can tell, the documents requested relate to an incident in March of 2025 during which limited land clearing was carried out at the project site which was deemed to be beyond the parameters of CEC 2400A approving geotechnical investigations. The incident in question, and the remedial action taken by DEPP, appear to be extensively and

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[30] SCRL's Originating Application, paras.154.2.3.2 and 154.2.3.3, makes reference to marine navigation concerns in waters facing North Bay.

[31] See e.g. EPPA, section 3(2) and para.1 of First Schedule

[32] See First Affidavit of Felipe MacLean, para.11

candidly addressed in paragraph 55 of Dr. Neilly-Murphy's first affidavit. I see no need for further disclosure on this topic to be ordered against the Developers to resolve the judicial review challenges, which principally concern the lawfulness of CECs 2884 and 2894. The request as framed is also unduly wide, seeking for instance draft reports prepared by BRON and internal DEPP memoranda or notes.

65. Mr. Smith further argued that, despite agreeing to disclose documents falling within the request in paragraph 20 of Callenders' letter and which were sent to the Director of DEPP, the Developers failed to provide the same. CEC 2884 specifically gave clearance for works associated with the construction of temporary housing (or a "*man-camp*"). CEC 2894 gave clearance for broader construction activities associated with the development. To the extent that they have not already been provided, the plans and accompanying documents submitted to the Director of DEPP in relation to "*temporary housing*" or the "*foundation design*" would appear to be relevant to the determination of the lawfulness of the impugned CECs. I would therefore be prepared to order their disclosure by the Developers. I see no need for disclosure to be made of any other documents referred to in paragraph 20 for the fair and just resolution of the current judicial reviews. The request as framed is also, in my view, unduly wide (e.g. it seeks production of "*All documents submitted to, reviewed by, or approved by any governmental authority…*").

66. Yonder's request for disclosure against the Developers can be addressed much more briefly. The third affidavit of Sherika Sands confirms that the first, third and fourth affidavits of Felipe MacLean were in fact in Yonder's attorneys' possession well before the date of their letter requesting production of the same and the filing of their application for specific disclosure.

67. Otherwise, Yonder seeks documents related to the Developers' earlier site plan approval granted by the Town Planning Committee in March 2025, including "*internal assessments*" leading to the issuance of the same. That decision is not the subject of challenge in Yonder's application for judicial review.[33] It was also overtaken by events when the Developers indicated their intention not to rely on their earlier site plan approval and to apply afresh for such approval. Disclosure of further documents in relation to this issue would appear to be unnecessary to resolve the judicial review challenge fairly and justly. The request is also framed far too broadly and, in substance, seeks disclosure from the Developers of the Town Planning Committee's internal documents.

68. Yonder similarly seeks disclosure of documents in relation to the March 2025 incident referred to earlier. The request is in almost identical terms to the request contained in paragraph 16 of Callenders' letter to Delaney partners dated 16 February 2026. For the reasons stated earlier, I see no need for further disclosure on this issue to be ordered against the Developers. As pointed out, the request is also unduly wide in scope.

[33] See Yonder's Originating Application filed 24 December 2025

(iv) Additional Comments

69. For completeness, I would only add that my omission to expressly refer to any enumerated requests in SCRL and Yonder's respective applications[34] is not an indication that I have not considered the same. On the contrary, I have carefully considered the Notices of Application, the affidavit evidence and the submissions of all parties in their entirety. A number of the other requests seek documents or classes of documents relating to issues which have already been discussed, such as: internal DEPP reviews, discussions and analysis; the various iterations of the marina; underlying technical material or modelling relating to dredging, flushing, marine habitat surveys and similar matters; information relating to publication of the EIA; documents submitted in connection with and internal assessments of the application for site plan approval; briefing notes and internal memoranda regarding representations to the Prime Minister; and correspondence with Crown Lands. Otherwise, they seek disclosure of documents or classes which, for the reasons already discussed and based on the applicable legal principles, I am simply not satisfied are necessary to resolve the two judicial review claims fairly and justly.

Disposition

70. In light of the foregoing, I order as follows:

70.1 SCRL and Yonder's applications for further disclosure against the Government Respondents are dismissed;

70.2. The Developers are to produce correspondence from DEPP to BRON in relation to concerns expressed by SCRL about marine navigation in North Bay prior to the issuance of CECs 2884 and 2894;

70.3 The Developers are to produce their amended HOA dated 21 May 2024 to SCRL and Yonder;

70.4 The Developers are to produce the plans and/or documents submitted to the Director of DEPP in relation to the "*temporary housing*" and "*foundation design*" aspects of the proposed project, which received environmental clearance in CEC 2884 and/or CEC 2894.

71. My Order will reflect that the Developers produce the documents referred to by 8 June 2026. This should be sufficient time given the very limited number of documents to be provided.

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

L. Farquharson

Farquharson, J.
1 June 2026

[34] For example, certain documents referred to in paragraphs 1, 5, 6, 7, 10, 11, 14, 19, 20, 24, 27, 28, 30, 32, 33, 34, 36, 42, 43, 44, 46, 48, 49, 50, 51, 52, 53, 54, 57, 58, 59, 60, 63, 64, 65, 66, 67 and 68 of Callenders' letter to OAG and paragraphs 6, 8, 11, 18, 19 and 29 of Callenders' letter to Delaney Partners.