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

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

AND

OTHERS

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

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BETWEEN:

THE KING

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THE RT. HON. PHILIP EDWARD DAVIS, Prime Minister of The Commonwealth of The Bahamas

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Respondents

EX PARTE

YONDER HOLDINGS LIMITED

Applicant

Before: The Honourable Mr. Justice Leif Farquharson

Appearances: Peter Village KC, Frederick Smith KC, R. Dawson Malone, Raven Rolle and Ebonesse Bain 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: 8 July 2026

RULING

Introduction

1. This is my third ruling in these consolidated judicial review claims. The general background to the dispute is addressed in my ruling on the Applicants' respective applications for interlocutory injunctive relief.[1] In my second ruling, which was issued this past June, I disposed of the Applicants' respective applications for specific disclosure, ordering very limited further disclosure.[2] The necessity of disposing of the applications for specific disclosure, which were exceedingly wide-ranging, unfortunately led to an earlier trial fixture being vacated and re-scheduled to 20-22 July 2026.

2. Sampson Cay Retreat Limited ("***SCRL***") and Yonder Holdings Limited ("***Yonder***") now seek permission to further amend their applications for leave to apply for judicial review. They both also seek permission to rely upon six (6) expert reports and to advance amendments dependent upon those reports.

3. The underlying litigation concerns the environmental-clearance process for a proposed development at East Sampson Cay in the Exumas. The material decisions presently

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

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

under challenge include Certificates of Environmental Clearance ("***CECs***") 2884 and 2894. The Applicants now seek to advance, in differing forms, further allegations concerning two earlier CECs (i.e. CEC 2400 and CEC 2400A), the relationship between the several CECs, the consultation process, the environmental material and the decision-making process of the Director of the Department of Environmental Planning and Protection ("***DEPP***").

4. The Government Respondents' position is not that every proposed amendment should be rejected. They accept that a focused statement of the central public law issues can assist the just and efficient determination of the claims. They do, however, oppose the admission of the six late expert reports and amendments founded upon them. They further oppose freestanding and/or late challenges to CEC 2400, CEC 2400A and the purported extension of CEC 2400A, and the maintenance of what they describe as an unnecessarily sprawling and repetitive pleading.

5. For the reasons which follow, I allowed amendments in the limited manner set out below. I accepted the Government Respondents' position, which was adopted by the Developers, that this served to bring focus to the central issues relevant to the extant judicial review claims, without allowing the proceedings to become an untimely challenge to other decisions or a merits-based environmental appeal. I am not prepared to allow the admission of the six expert reports. The remaining proposed amendments are also refused.

The Applications Before the Court

6. SCRL filed an application on 9 April 2026 seeking permission to re-amend, supported by a draft Re-Re-Amended Application for Leave (the "***third version***").[3] It thereafter filed a further application to re-amend on 16 June 2026, supported by a draft Re-Re-Re-Amended Application for Leave (the "***fourth version***").[4] By Notice of Application filed on 3 July 2026, SCRL sought permission from the Court to adduce in evidence the six expert reports referred to.

7. Yonder followed suit and, by Notices of Application filed on 27 April 2026 and 16 June 2026, sought permission to amend and to re-amend its Application for Leave.[5] The latest version of its proposed pleading materially overlaps with SCRL's fourth version.

General Principles and Material Provisions of the CPR

8. Rule 54.3(6) of the *Supreme Court Civil Procedure Rules, 2022* ("***CPR***") provides that the Court hearing an application for leave to apply for judicial review may permit an applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise, on appropriate terms. Rule 54.6(2) confers a discretion to permit amendment of an applicant's statement at the hearing of an application for judicial review, on such terms as Court deems fit. Rule 20.1(3) addresses changes to a statement of case generally. This directs that in considering an application to amend

[3] See 10th Affidavit of Jeffrey Clark Jr. filed 10 April 2026, p.26

[4] See 11th Affidavit of Jeffrey Clark Jr. filed 16 June 2026, p.69

[5] Supported, respectively, by the 3rd Affidavit of Darla Toleffson filed on 27 April 2026 and the 4th Affidavit of Darla Toleffson filed on 16 June 2026

a statement of case, the Court must have regard to promptness after the applicant became aware that the amendment was desired; prejudice if refused or permitted; whether prejudice can be compensated by payment of costs and/or interest; whether the trial date or likely trial date can be met; and the administration of justice.

9. I readily acknowledge that the court will normally permit such amendments as may be required to ensure the real dispute between the parties can be adjudicated upon (see e.g. (*DeSmith's Judicial Review*, 9th Ed., para.16-041). There are also numerous authorities confirming that public law proceedings must be conducted with procedural rigour (see e.g. *R. (Talpada) v. Secretary of State for the Home Department* [2018] EWCA Civ 841, para.69). This does not require the Court to prefer form over substance where new material properly requires reformulation of a party's case. Procedural rigour protects not only the opposing party but the wider public interest (*Talpada*, para.67).

10. CPR Rule 54.4 provides that an application for judicial review shall be made promptly and, in any event, within six months from the date when the grounds first arose unless there is good reason to extend time. The obligation of promptitude reflects the public interest in good administration and in the finality of decisions upon which public bodies and third parties may have acted. In *Responsible Development of Abaco (RDA) Ltd. and Anor. v. Ingraham and Ors.* [2012] 3 BHS J. No. 35, at paras.24 and 27–30, the Court of Appeal held that promptness is a requirement distinct from the six-month long-stop, and that whether an extension is justified requires the Court to consider any good reason for delay, prejudice to other parties and detriment to good administration. Albeit decided under the former *Rules of the Supreme Court*, the Court's comments at paragraphs 24-30 of its judgment are instructive:

> *"24 The effect of Order 53 rule 4 (above) is that even if an application is made within the six month period, a court may nevertheless hold that it was not made promptly. However, if an application is not made promptly, or within the six month period prescribed, the court nevertheless has discretion to extend the time, if there is good reason for the delay.*
> *25 ….*
> *26 ….*
> *27 It is acknowledged in many authorities that applications for judicial review should be brought as speedily as possible, and mention need only be made of Lord of Lord Diplock's observations in O'Reilly v Mackman [1983] 2 AC 237 at 280-281:*
>
> > *"The public Interest In good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary In fairness to the person affected by the decision."*
>
> *28 Notably, however, Order 53 rule 4(1) also provides protection to an applicant from being run out of court merely on the basis of undue delay, and allows the court to grant an extension of time where there are good reasons for the delay.*
> *29 Interestingly, section 31 (6) of the English Supreme Court Act, 1981 provides that even if there are good reasons for extending the time under the identical provision to our Order 53 rule 4 (1), the English Court may still refuse to do so if it would be likely to cause substantial hardship to, or substantially*

prejudice the rights of, any person, or would be detrimental to good administration ….
30 There is no equivalent of section 31 (6) in our law, but, it would seem to me that prejudice to the other parties, or detriment to good administration are matters to be considered when exercising the discretion whether to grant an extension." [Emphasis supplied]

11. The procedural rules governing expert evidence in civil proceedings are contained in CPR Part 32. Rule 32.2 states that expert evidence "*must be restricted to that which is reasonably required to resolve the proceedings justly*". All sides were in agreement that the admissibility of expert evidence in judicial review proceedings specifically, falls to be considered by reference to the analysis contained in the English Divisional Court's judgment in R. (Law Society) v. Lord Chancellor [2019] 1 All ER 638, appropriately tailored to the Bahamian statutory and legal context. Due to its import, I set out paras.36–44 of the Court's judgment in full below:

"The applicable principles
[36] *The use of expert evidence in judicial review proceedings, as in all civil proceedings, in the High Court is governed by CPR Pt 35. CPR 35.1 restricts expert evidence to 'that which is reasonably required to resolve the proceedings'. It follows from the very nature of a claim for judicial review that expert evidence is seldom reasonably required in order to resolve it. That is because it is not the function of the court in deciding the claim to assess the merits of the decision of which judicial review is sought. The basic constitutional theory on which the jurisdiction rests confines the court to determining whether the decision was a lawful exercise of the relevant public function. To answer that question, it is seldom necessary or appropriate to consider any evidence which goes beyond the material which was before the decision-maker and evidence of the process by which the decision was taken—let alone any expert evidence.*
[37] *The classic statement of the extent to which evidence other than evidence of the decision under challenge is admissible in judicial review proceedings is that of Dunn LJ in R v Secretary of State for the Environment, ex p Powis [1981] 1 All ER 788 at 797–798, [1981] 1 WLR 584 at 595–596. The categories identified in that case can be summarised as follows:*
- *(a) evidence showing what material was before or available to the decision-maker;*
- *(b) evidence relevant to the determination of a question of fact on which the jurisdiction of the decision-maker depended;*
- *(c) evidence relevant in determining whether a proper procedure was followed; and*
- *(d) evidence relied on to prove an allegation of bias or other misconduct on the part of the decision-maker.*

[38] *Although these categories are a useful and well-established list, it would be wrong to treat them as if they were embodied in statute or as necessarily exhaustive. That is particularly so as public law has developed in ways which were not in contemplation when the Powis case was decided. In R (on the application of Lynch) v General Dental Council [2003] EWHC 2987 (Admin), [2004] 1 All ER 1159, (2003) 79 BMLR 16, Collins J was prepared to allow some extension of the possibility of admitting expert evidence beyond the Powis categories in a case where a decision is challenged on the ground of* *irrationality. The judge accepted that, where an understanding of technical matters is needed to enable the court to understand the reasons relied on in making the decision in the context of a challenge to its rationality, expert evidence may be required to explain such technical matters.*

[39] *We would extend this principle to a situation where—as in the present case—it is alleged that the decision under challenge was reached by a process of reasoning which involved a serious technical error. It would be glib to suppose that, if an error in reasoning requires expert evidence to explain it, a challenge to the decision on the ground of irrationality cannot succeed. In Gibraltar Betting & Gaming Association Ltd v Secretary of State for Culture, Media & Sport [2014] EWHC 3236 (Admin), [2015] 1 CMLR 751 (at [100]), in the context of a challenge to a measure under EU law as 'manifestly inappropriate', Green J said:*

> *'... an error which is far from being obvious or palpable may nonetheless prove to be fundamental. For instance a decision or measure based upon a conclusion expressed mathematically might have been arrived at through a serious error of calculation. The fact that the calculation is complex and that only an accountant, econometrician or actuary might have exclaimed that it was an "obvious" error or a "howler", and even then only once they had performed complex calculations, does not mean that the error is not manifest ... An error will be manifest when (assuming it is proven) it goes to the heart of the impugned measure and would make a real difference to the outcome.'*

[40] *The same point in principle applies, in our view, to a challenge based on irrationality. A decision may be irrational because the reasoning which led to it is vitiated by a technical error of a kind which is not obvious to an untutored lay person (in which description we include a judge) but can be demonstrated by a person with relevant technical expertise. What matters for this purpose is not whether the alleged error is readily apparent but whether, once explained, it is incontrovertible.*

[41] *The corollary of this is that, as was recognised in the Lynch case, para [18], if the alleged technical error is not incontrovertible but is a matter on which there is room for reasonable differences of expert opinion, an irrationality argument will not succeed. This places a substantial limit on the scope for expert evidence. In practice it means that, if an expert report relied on by the claimant to support an irrationality challenge of this kind is contradicted by a rational opinion expressed by another qualified expert, the justification for admitting any expert evidence will fall away.*

[42] *Two further issues are raised in these proceedings on which, in our view, expert evidence could in principle be admissible. The first is whether the consultation procedure was unfair, in particular because information of substantial importance to the decision was not disclosed. As discussed below, it is relevant in determining that issue to have regard to the potential impact of the proposal put out for consultation. Expert evidence may assist in showing this. We also think it relevant to consider whether consultees were prejudiced by the non-disclosure of significant information. Where, as in this case, the information in question is of a technical nature, and the claimant says that, had the information been disclosed, it would have wished to make technical submissions in response to the consultation, expert evidence may be admissible to illustrate the points which might have been made and to show their materiality.*

[43] The other issue raised in this case on which expert evidence could in principle, depending on its content, be admissible is the argument that the decision to reduce legal aid fees constituted an unlawful interference with the right of access to justice.

The procedure followed

[44] If a party to judicial review proceedings wishes to rely on expert evidence in support or defence of the claim, it is essential that an application for permission to do so and for appropriate consequential directions should be made at the earliest possible opportunity. The points made in this regard in BAA Ltd v Competition Commission [2012] CAT 3 at [82], are equally applicable in judicial review proceedings generally. In the ordinary course, any such application by the claimant should be made when its grounds for bringing the claim are filed so that it can be considered by the judge who makes the decision whether to give permission to proceed with the claim. In the present case the Law Society points out—and we accept—that it was not until the Lord Chancellor filed his detailed grounds of resistance and written evidence on 27 April 2018 that his reliance on the LAA analysis and the significance of that analysis for the claim became clear. We accordingly accept that, in so far as the expert evidence of Professor Adams responds to that analysis, the need for that evidence could not reasonably have been identified sooner." [Emphasis supplied]

12. Based on the foregoing, and without seeking to address the matter exhaustively, the starting point is that expert evidence must be restricted to that which is "*reasonably required to resolve the proceedings justly*". In this regard, expert evidence will seldom be reasonably required in judicial review proceedings because the court is concerned with the lawfulness of the decision-making process rather than the merits of the decision. It may nonetheless be admitted: where an understanding of technical matters is needed to enable the court to understand the reasons relied on in making the decision; where it is alleged that the decision under challenge was reached by a process of reasoning which involved a serious technical error; where a decision is alleged to be irrational by reason of serious technical error; or to show unfairness in a consultation procedure, in particular by reason of non-disclosure of information of substantial importance to the decision. Importantly, any such alleged technical error, once explained, should be incontrovertible. Accordingly, where an alleged error is not incontrovertible and is instead a matter on which qualified experts may reasonably disagree, an irrationality challenge will not succeed.

13. It is also essential that a party seeking to rely on expert evidence make an application for permission to do so, and for appropriate consequential directions, at the earliest possible opportunity.

Permitted Amendments

14. I accepted Mr. Fitzgerald KC's submission that the fourth version usefully identifies five principal areas of dispute: the alleged "*salami-slicing*" of the project; the scope and fairness of consultation; the alleged need for consultees to undertake a "*treasure hunt*" for information; the adequacy of environmental material and the alleged need for a "*paper chase*"; and rationality or material considerations. Properly confined, those matters bring more focus to the issues already arising in the extant claims.

15. The Government Respondents did not therefore object to the amendments identified in paragraph 10 of their submissions, subject to their position on the expert evidence-driven amendments and subject to the filing of the first affidavit of Dr. Neely in SCRL's second judicial review claim; that is, Action No.2026/PUB/jrv/0008 (hereinafter referred to as "***JR2***").[6] This included a very large number of amendments comprising corrections, a pleaded chronology, a high-level statement of the central claims, matters of law and the focused grounds concerning salami-slicing, consultation, adequacy of information, material considerations, rationality and enforcement. To my mind, this was an appropriate concession. The unopposed amendments appeared to largely consist of reformulations of SCRL's existing case, with substantial legal argument. The Developers adopted the position of the Government Respondents.

16. Those amendments were accordingly allowed. They arise from the same overall factual matrix as the claims already before the Court and should largely be capable of determination on the existing evidential record, supplemented by the agreed affidavit.

17. SCRL was accordingly granted permission to amend by incorporating the following categories of amendment from the fourth version: paragraphs 15A, 22, 27, 30A, 30B, 30E, 31.11A–C, 32.1, 32.1A, 32.2, 33, 44A–44C, 54B–54C, 54F, 54G, 54H.1, 58A, 73.1A, 73.3, 74.6A, 144A–144Y, 151A, 159A–159E, 160, 160.2, 163A–163D, 164.1.3A, 164.1.5A, 164.1.7–164.1.9, 165A, 165.2C–165.2D, 172, 178A and 179.1. This is only allowed insofar as those amendments do not advance the prohibited allegations or matters identified below, for which leave to amend is refused.

<u>CEC 2400 and CEC 2400A</u>

18. The permitted amendments may refer to CEC 2400 and CEC 2400A where that reference bears directly upon the lawfulness of the decision-making process already under review. This includes the contention that separate clearances formed part of an alleged "*salami-slicing*" of the project and the contention that the omission of CEC 2400 and CEC 2400A from information provided to consultees affected the adequacy of consultation on the extant CEC decisions. Such references are relevant contextual allegations. They are also capable of being answered on the material already available, including the first affidavit of Dr. Neely in JR2, and they do not in themselves require the Court to grant relief in respect of CEC 2400 or CEC 2400A.

19. The position is different in respect of the proposed freestanding challenges to the earlier CECs. In this regard, SCRL seeks to allege, among other matters, that CEC 2400 and CEC 2400A were unlawful because: DEPP did not require an EIA, EMP or consultation; the Director failed to exercise independent judgment in granting them; the decisions were predetermined or made in secret; there was no application for CEC 2400A; and the Director failed to conduct or consider internal DEPP assessments. Further allegations are also advanced concerning the extension of CEC 2400A.

20. These allegations are not merely particulars of the claims concerning the extant CEC decisions. They are for all intents separate challenges to separate administrative

[6] JR2 was commenced by SCRL 2 April 2026 and seeks to challenge the decision of the Director of Environmental Planning and Protection dated 15 December 2025 to extend CEC 2400A. By agreement of the parties, this has been consolidated with the current judicial reviews.

decisions, seeking distinct relief and inviting the Court to determine their legality directly. They must therefore satisfy the requirement of promptitude in CPR 54.4.

21. In my view, they do not. CEC 2400 is dated 20 August 2024 and was exhibited to the first affidavit of Felipe MacLean filed in this action in October 2025, before the grant of leave. CEC 2400A is dated 8 October 2024 and was available to SCRL in July 2025. This is admitted by the SCRL in paragraph 66 of the 1st Affidavit of Jeffrey Clark filed on 26 August 2025, where he states:

> "*On 8th October 2024, the DEPP issued CEC 2400A to the Developers which related to geotechnical investigations….<u>We did not know about the issuance of CEC 2400A until 22 July 2025. To my knowledge there was not a public presentation or opportunity for public consultation prior to the issuance of this certificate.</u>*" [Emphasis supplied]

22. The scope of each CEC was stated on its face. Once the Applicants had the CECs, they knew (or ought to have known) whether an EIA or consultation had preceded the decision, and they knew the factual foundation for their allegation that those matters had not occurred. The Applicants' further review of subsequently disclosed material may have added detail, but it did not create the core grounds they now seek to pursue by way of amendment.

23. The purported extension of CEC 2400A is, in any event, the subject of separate judicial review proceedings; namely, JR2. The Court should not in my view permit the current proceedings to become a vehicle for an additional challenge to that decision. Furthermore, CEC 2400 was revoked and replaced by CEC 2400A on 8 October 2024. The clearance for the service-dock which is material to the extant proceedings is CEC 2894. A direct challenge to the revoked CEC 2400 would therefore appear to be academic.

24. I have carefully considered SCRL's affidavit evidence in support of its application to amend. In my view, no satisfactory explanation has been offered for the delay in seeking to convert this litigation into a direct challenge to CEC 2400 and CEC 2400A, or to mount a further or separate legal challenge to the extension decision. I also accept the Respondents' submission to the effect that the proposed freestanding challenges would also make an already lengthy proceeding even more unwieldy, expand the evidence and issues materially and detract from the core question as to the lawfulness of the assessment, consultation and decision-making in relation to the decisions already under review in these proceedings. Besides the obvious prejudice this would entail for the Respondents, it is also highly prejudicial to the public interest in good administration for the legality of those CECs to be the subject of challenge at this juncture. CEC 2400 (which in any event was revoked) was issued over 24 months ago and CEC 2400A was issued approximately 23 months ago.

25. Permission is accordingly refused for the amendments identified by the Government Respondents at paragraph 27 of their submissions and for any other amendment which in substance seeks to directly challenge the legality of CEC 2400, CEC 2400A or the purported extension of CEC 2400A.

Expert Evidence

26. SCRL seeks to rely on six expert reports and, through proposed paragraphs 54H.2–54H.13, 55.19A and 164C of the fourth version, a substantial body of new factual assertions and opinion derived from those reports, including (among other matters):

(i) the significance of winter surveys and whether they miss "*reptiles at peak activity, and seasonally active invertebrates*" (fourth version, para.54H.4.1);
(ii) the adequacy of methodological detail and of specialist expertise (fourth version, para.54H.4.2, 54H.4.3);
(iii) the relevance of simultaneously conducted surveys for birds, reptiles, plants and invertebrates (fourth version, para.54H.4.4);
(iv) the characteristics of adequate avifaunal surveys (fourth version, para.54H.4.5);
(v) the relevance of nocturnal surveys for birds and bats (fourth version, para.54H.4.6);
(vi) the significance of reptile surveys being conducted in winter and of the species cyclura cychlura figginsi (fourth version, 54H.4.7);
(vii) the necessity for supplemental wet season surveys (fourth version, para.54H.4.8);
(viii) the association of various habitats with particular avifaunal assemblages, and the necessity for assessments of species such as the Kirtland's Warbler, Bahama Woodstar and the Exuma Island Iguana (fourth version, para.54H.4.9);
(ix) the sufficiency of noting but not specifically assessing the Whitespotted Eagle Ray (fourth version, para.54H.5.9);
(x) the necessity for specifically assessing the West Indian Manatee (fourth version, para.54H.5.10);
(xi) the adequacy of the fish service methodology (fourth version, para.54H.5.11);
(xii) the assessment of marine biodiversity across different seasons (fourth version, para.54H.5.12);
(xiii) the adequacy of mitigation of water resource impacts (fourth version, para.54H.11.1) (hh);
(xiv) the adequacy of mitigation of hydrological impact (fourth version, para.54H.11.2);
(xv) the adequacy of mitigation of waste impact (fourth version, para.54H.11.3);
(xvi) approach to "*assessment of safety, navigation, and pollution effects*" (fourth version, para.54H.12).

27. The reports are those of Dr. Craig Dahlgren, Mr. Miles Harris, Mr. Clive Carpenter, Mr. Andrew Baker, Mr. Mark Gash and Mr. Brent Williamson.

28. The report of Dr. Dahlgren, PhD of the Perry Institute for Marine Science, dated June 2026, presents the result of field surveys of marine habitats conducted over two days in March 2026. It provides an assessment of the potential impacts of the service-dock and access channel aspects of the project, based on engineering plans and project descriptions in EIA Revision 1 (2024) and EIA Revision 2 (2025) (see Report, p.5). The adequacy of the EIA and EMP is said to be outside the scope of the report (Report, p.8). At page 37, Dr. Dahlgren acknowledges:

"There is a range of professional opinion on the magnitude and reversibility of dredging and turbidity-related impacts on coral and seagrass habitats. Some practitioners consider that, with rigorous mitigation (effective sediment control, seasonal timing, and monitoring), such impacts can be materially reduced; others, including the authors of much of the literature I rely upon, conclude that in high-energy channel settings such measures are frequently ineffective and residual impacts should be expected".

29. The report of Mark Gash of Turnstone Ecology, dated June 2026, reviews the adequacy of the EIA and EMP from an ecological standpoint, with a particular focus on avifauna surveys. The report is critical of the quality of the bird surveys, the assessment of the conservation value of certain species and the adequacy of the proposed mitigation measures, and expresses the view that: *"In my expert opinion, no reasonable decision-maker properly directing itself on the material before it could conclude that this proposal is acceptable in ornithological terms"* (see Report, para.C8). In reaching this conclusion, heavy reliance is placed on International Finance Corporation Performance Standard 6 ("***IFC 6***") and World Bank Environmental and Social Standard 6 ("***WB ESS6***"), which it is said are *"applied here not because the project is necessarily subject to international financing, but because they represent the most comprehensive and widely accepted statement of what constitutes rigorous ecological assessment at an international level."* The report is also frank that it is applying a *"significantly higher standard"* than that in fact required under the applicable domestic EIA framework (Report, para.D1):

"<u>Relative to the domestic framework against which the Yntegra EIA was prepared, IFC PS6 and WB ESS6 represent a significantly higher standard of ecological assessment</u> and are applied here not as a minimum bar but as the most robust and internationally defensible framework available for a project of this type and ecological sensitivity."

30. Mr. Andrew Baker of Baker Consultants Ltd. in his report of 22 June 2026 provides opinion evidence on the adequacy of the assessment of ecological risks and acceptability of ecological impacts. He indicates that his report should be read alongside that of Mr. Gash and is intended to address whether the EIA and EMP provide a sufficient and lawful basis on which the decision-making authorities could decide the Developers' application for environmental-clearance, and whether the Development is ecologically acceptable and consistent with the protection afforded to the natural environment of The Bahamas (see Report, para.3.1). The report is critical of, among other things, the underlying surveys being undertaken in a winter season, the investigation of certain animals and plants, and the assessment of the impact of changes in the design of the project. Mr. Baker also relies on IFC 6 and WB ESS6 as providing the recognised benchmark and expresses the view that the EIA does not comply with international standards.

31. Mr. Brent Williamson, maritime consultant, in his report dated 22 June 2026, addresses marine safety and navigation issues associated with "*commercial shipping*" in the North Bay, and the construction of the supply dock (see Report, para.1.5). It raises concerns about the design of vessels to be used at the supply dock and associated implications on dredging volume.

32. The report of Miles Harris, a Coastal and Civil Engineer of Smith Warner International Limited ("***Smith Warner***"), dated 22 June 2026, addresses coastal engineering and coastal process matters relating to the proposed project, including dredging and breakwater impacts. Smith Warner has already made a number of contributions on behalf of SCRL with respect to the proposed project, including before the proceedings were commenced. These include: a very detailed and comprehensive coastal impact assessment letter dated 2 October 2024 reviewing the EIA; a memorandum on channel width and depth dated 28 May 2025; and coastal modelling results dated 11 August 2025. Mr. Harris' report summarises the previous Smith-Warner analyses pre-dating SCRL's judicial review, and presents the results of an "*Additional Seabed Dredging Analysis*" of 20 June 2026. It considers the relationship between channel depth at various hypothetical widths and dredging volume. It also includes a review of EIA Revision 2, from March 2025, making various allegations as to alleged deficiencies. Centrally, the report repeats previously made observations as to the relevance of the type of vessel in assessing dredging, and relevance of sediment transportation to maintenance dredging.

33. The report of Clive Carpenter of GWP Consultants addresses the adequacy of the assessment of risks of pollution and other impacts on groundwater resources and hydrology at Sampson Cay. It is largely focused on the adequacy of the EIA, and suggests that the EIA fails to adequately assess the impact of the development on the groundwater and hydrological environments. Throughout the report, it does however acknowledge that relevant impacts are, in fact, identified within the EIA.

34. I am not prepared to allow the admission of the reports. First, the applications are exceedingly late by any possible standard. As indicated, it is "*essential*" that a party seeking to rely on expert evidence make an application for permission to do so "*at the earliest possible opportunity*" (*Law Society*, para.44). The reports were served in June 2026, approximately ten months after the commencement of these proceedings, and just weeks before the trial of the substantive claims scheduled to be heard in July 2026. Their predominant focus is EIA Revision 2, which dates from March 2025. SCRL confirms being aware of the contents of EIA Revision 2 since 22 July 2025, even before its application for permission to apply for judicial review (see 1st Affidavit of Jeffrey Clarke, para.75). The Applicants have not adequately explained why the expert evidence they now seek to rely on could not have been obtained at an earlier stage.

35. Secondly, I am not satisfied that the reports are necessary. As the Respondents point out, the record shows that SCRL made extensive representations of a scientific or technical nature during the consultation process itself, addressing many of the issues raised in the expert reports. These were explained in detail in the first affidavit of Dr. Neely filed on 16 January 2026 ("***Neely 1***"), and included:

(i) a review by SEV Consulting, environmental consultants, dated 16 August 2023 with an analysis of the environmental impacts of the Development (Neely 1, para.23);
(ii) a further review by SEV Consulting of 23 September 2024 with a review of and detailed comments on EIA Revision 1 (Neely 1, para.36);
(iii) further detailed review of EIA Revision 1 by ONE Consultants, environmental consultants, by letter of 21 October 2024 (Neely 1, para.43);
(iv) SCRL's formal and lengthy consultation response of 19 November 2024 (Neely 1, para.45);

(v) a further submission by Ferreira & Company consultants, which made various observations as to EIA Revision 1 (Neely 1, para.51);

(vi) SCRL's own examination of the seabed and impact of dredging, provided on 13 May 2025 (Neely 1, para.58).

36. Thirdly, in substantial part, the reports invite the Court to decide whether the EIA and EMP were scientifically exhaustive, whether a different assessment methodology ought to have been adopted, the acceptability of environmental impacts and the sufficiency of proposed mitigation. Those are normally matters of planning and environmental merits, as opposed to matters for judicial review.

37. An EIA is not required to address every issue that another expert considers desirable, or to eliminate all room for professional disagreement. I accept Mr. Fitzgerald's basic submission that what he described as a "*descent into the minutia*" is not generally appropriate on a judicial review of the adequacy of an EIA or EMP, and that a significant margin of appreciation is to be afforded to the decision-maker. The point was well made in *Belize Alliance of Conservation Non-Governmental Organisations v. Department of the Environment of Belize* [2004] UKPC 6, at para.69, citing with approval the judgment of Cripps J in *Prineas v. Forestry Commission of New South Wales* (1983) 49 LGRA 402:

> *"The fact that the environmental impact statement does not cover every topic and explore every avenue advocated by experts does not necessarily invalidate it or require a finding that it does not substantially comply with the statute and the regulations."*

38. In addition, in the case of Dr. Dahlgren, he acknowledges that there is *"a range of professional opinion"* on the matters he addresses in his report. Merely demonstrating a competing view on the adequacy of the treatment of a particular issue would appear to serve no practical purpose in resolving the extant judicial reviews (*Law Society*, para.41). The stated limitation on his opinion would also appear to negate any suggestion of "*incontrovertible*" error.

39. Relatedly, Mr. Gash acknowledges that he applied a *"significantly higher standard"* than that in fact required under our domestic legislation. As the Respondents point out, the requirements for EIA's in this jurisdiction are contained in the *Environmental Protection and Planning Act, 2019* ("***EPPA***") and the *Environmental Impact Assessment Regulations, 2020* ("***EIAR***"), including, in particular, Regulation 5 and the Second Schedule of the EIAR. The application of a differing (and significantly higher) standard to the issues considered, similarly raises concerns as to the incontrovertibility of his conclusions. The same applies to Mr. Baker, who applied the same standard.

40. Mr. Williamson's report addresses issues which have featured in this litigation from its inception, and even during the public consultation exercise. He also fails to address the fact that the preparation and submission of EIAs and EMPs in this jurisdiction is regulated by the EPPA and the EIAR, and fails to identify an incontrovertible, centrally material technical error of the kind contemplated in *Law Society*. A number of the matters he speaks to, such as pilotage and the use of buoys, also potentially fall within the remit of other regulators.

41. A further issue affecting Mr. Harris specifically is that, although seemingly presented as an independent and impartial expert, he is and was at material times employed with Smith Warner, who made extensive partisan contributions on behalf of SCRL during the public consultation phase with resepct to the project. In para.D-3 of his report, he also confirms that his *"instructions developed in stages"* extending as far back as 18 September 2024.

42. It is also noteworthy that all six reports, on their face, are stated to have been prepared for both the Supreme Court and separate proceedings before the Planning and Subdivision Appeal Board. Their possible utility in a merits-based challenge does not establish their necessity in these judicial review claims, and risks transforming the proceedings into a full re-run of the merits of the CEC applications.

43. I do not accept the suggestion made by the Applicants that the Respondents stand to suffer no prejudice by the admission of the expert reports. The CECs under challenge in this action were issued in June 2025. This action was commenced in August of 2025. The application to adduce the expert reports was moved just weeks before the last scheduled trial date, after extensive preparations had been made by all sides. The public interest in good administration also requires that the legality or otherwise of the challenged CECs be determined without unnecessary further delay.

44. In all the circumstances, I refuse permission to rely on the six expert reports. For the same reason, permission is refused for proposed paragraphs 54H.2–54H.13, 55.19A and 164C, insofar as they introduce factual assertions or expert opinions drawn from those reports.

45. I would only add in closing that in reaching this conclusion, absolutely no personal or other criticism is made of any of the six proposed experts.

<u>Yonder's Application</u>

46. Yonder's amendment application seemingly seeks the wholesale replacement of its 20-page originating application and substantially duplicates SCRL's fourth version. I accept the Respondents' submission that a different and substantially expanded pleading, advancing the same issues in a different form, would not promote efficient case management.

47. In the circumstances, I will allow Yonder to amend only to the same extent that SCRL has been permitted to amend. This should ensure that the common issues are presented consistently, while not adding substantially to costs. Otherwise, the other proposed amendments are refused for the same reasons as stated in relation to SCRL.

<u>Disposition</u>

48. In closing, the remaining amendments sought by SCRL and Yonder are refused. Yonder is granted permission to amend only to the same extent as approved in relation to SCRL (see paragraph 17 of this Ruling). Yonder shall file and serve a version of its amended application which conforms to this ruling within seven days.

49. The application by SCRL to adduce in evidence the expert reports of Dr. Craig Dahlgren, Mr. Miles Harris, Mr. Clive Carpenter, Mr. Andrew Baker, Mr. Mark Gash and Mr. Brent Williamson is dismissed. Leave to adduce the said reports in evidence is also refused in relation to Yonder.

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

L. Farquharson

Farquharson, J.
3 September 2026