

**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. 2026/PUB/JRV/0008**

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

**BETWEEN:**

**THE KING**

**AND**

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

**Respondent**

***EX PARTE***

**SAMPSON CAY RETREAT LIMITED**

**Applicant**

**AND:**

**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:**

**THE KING**

**AND**

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

**AND**

**OTHERS**

**Respondents**

***EX PARTE***

**YONDER HOLDINGS LIMITED**

**Applicant**

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**Before:** The Honourable Mr. Justice Leif Farquharson

**Appearances:** Frederick Smith KC, Peter Village KC, R. Dawson Malone, Raven Rolle and Ebonesse Bain for the Applicant in Claim Nos.2025/PUB/jrv/00020 and 2026/PUB/jrv/0008

Edward Fitzgerald KC, David Higgins and Adele Mangra for the 1<sup>st</sup> – 8<sup>th</sup> Respondents in Claim No.2025/PUB/jrv/00020 and for the Respondent in Claim No.2026/PUB/jrv/0008

Robert Adams KC and Edward Marshall II for the 9<sup>th</sup> – 10<sup>th</sup> Respondents in Claim No.2025/PUB/jrv/00020

**Heard on the papers** (Submissions on behalf of Sampson Cay Retreat Ltd. filed on 21 September 2026; Submissions on behalf of the Government Respondents filed on 11 September 2026; Submissions on behalf of the Developers filed on 16 September 2026, with Supplemental Submissions laid over on 20 September 2026)

## **RULING**

### **Introduction**

1. On 3 September 2026, I issued a ruling denying applications by Sampson Cay Retreat Ltd. ("**SCRL**" or the "**Applicant**") and Yonder Holdings Ltd. ("**Yonder**") seeking permission to further amend their respective applications for judicial review and to adduce in evidence six expert reports.
2. By notice of application filed on 8 September 2026, SCRL seeks: (i) leave to appeal against my orders refusing permission to rely upon the six expert reports and refusing specified amendments to its pleaded case; (ii) leave to appeal a directions order pronounced on 26 August 2026, insofar as this fixed the consolidated substantive hearing for the week commencing 28 September 2026; and (iii) a stay of the substantive hearing pending determination of the intended appeal. In the alternative, the Applicant invokes Article 28 of the Constitution, alleging that proceeding to trial would infringe its right under Article 20(8) to a fair hearing.
3. The Government Respondents and the Developers oppose all relief. They submit, in summary, that the challenged decisions are interlocutory case-management decisions; that the proposed appeal has no realistic prospects of success; that the grant of a stay would cause the loss of a listed substantive hearing and is not supported by the balance of justice; and that the Applicant's recourse to the Constitution is improper and does not support the grant of a stay.
4. This is my ruling on the application for leave and a stay. It should be read in tandem with my ruling of 3 September 2026.

### **Issues**

5. The principal issues arising are:
  - (i) whether the proposed appeal has a realistic prospect of success, or raises an issue which in the public interest ought to be examined by the Court of Appeal or requires clarification;
  - (ii) if leave is granted, whether the interests of justice require a stay of the substantive hearing;
  - (iii) whether the circumstances disclose an actual, continuing or likely contravention of Article 20(8), and, if so, whether constitutional relief should be granted under Article 28.

### **Applicable Principles**

#### *Leave to appeal*

6. The legal test for the grant of leave to appeal is well settled in this jurisdiction. Permission may be granted where a proposed appeal has a realistic, as distinct from fanciful, prospect of success, where the appeal raises an issue which ought in the public interest to be examined by the Court of Appeal or if the appeal raises an issue where the law requires clarification. (See e.g. Maria Iglesias Rouco and Anor. v. Juan Sanchez Busnadiego and

Ors. [2022] 2 BHS J. No.160, paras.54-55; *Junkanoo Estates Ltd. v. UBS (Bahamas) Ltd.* SCCivApp No.00049 of 2024, paras.20-22)

7. There is a marked reluctance on the part of the appellate courts to interfere with discretionary, case management decisions, and an appellate court does not intervene merely because it might have exercised the discretion differently. To this end, it is necessary to show an arguable error of law or principle, a material misapprehension of fact, reliance upon an irrelevant consideration, failure to consider a relevant matter, procedural unfairness, failure to exercise the discretion or a conclusion outside the generous ambit within which reasonable disagreement is possible. (*Maria Iglesias Rouco*, para.56; *Azam v. University Hospital Birmingham NHS Foundation Trust* [2020] EWHC 3384 (QB), paras.50-52)
8. The decision under challenge concerns the admissibility of expert evidence and amendments in judicial review proceedings. The governing authority relied upon by all parties with respect to the admission of expert evidence was *R. (Law Society) v. Lord Chancellor* [2018] EWHC 2094 (Admin), paras.36–44). Expert evidence is exceptional in judicial review and must be reasonably required to resolve the proceedings justly. The court in such proceedings is concerned with the lawfulness of decision-making, not a rehearing of the merits. *Law Society* recognises that technical expertise may in an appropriate case assist a court with an alleged serious technical error, or with whether non-disclosure of material technical information rendered a consultation unfair. It also stresses that applications for expert evidence should be made at the earliest practicable opportunity.

#### *Stay*

9. The Court's power to grant a stay is discretionary and is exercised in accordance with the interests of justice. Material considerations include the strength of the proposed appeal, whether refusal would render an appeal nugatory or stifle it in practical effect, and the respective prejudice to the parties and to the administration of justice. The ordinary position is not to stay proceedings merely because an interlocutory appeal is proposed. A helpful summary of a number of the guiding principles was recently provided by Kokaram JA in *Palm Cay Development Co. Ltd. v. Allworth Pickstock* SCCiv App No.2024 of 2026, who, after referring to a line of previous authorities, stated (at paras.17-19):

*“17. It is to be remembered that what the court is considering on this application is a stay of the Supreme Court proceedings pending an appeal rather than a stay of the execution of a judgment but, the general principles no doubt are applicable, subject to an understanding of the subject matter of the proceedings. The overarching consideration is to make such order which best accords with the interest of justice. Culling from the authorities cited and considered such as *Wilson v Church (No. 2)* [1879] 12 Ch D 454, *Linotype-Hell* 1992] 4 All ER 887; *Leicester Circuit v Coates Brothers* [2002] EWCA Civ 474; *Turtle Creek Investments Limited v. Daybreak Holding Limited* (above); *The Bahamas Real Estate Association v Gregory Smith* SCCivAppNo. 109 of 2015; *Bimini Blue Coalition Limited v Christie Prime Minister of the Commonwealth of the Bahamas and others* [2014] 1 BHSJ No 153 the following general principles are applicable in considering this application:*

*(a) The court, in considering an application for a stay, is exercising its undoubted judicial discretion not arbitrarily but within the parameters of the*

broad question: is there a risk of injustice to either party if the stay is granted or refused, having regard to all the circumstances of the case. Indeed, in Leicester Circuits Ltd v Coates Brothers plc (above), Lord Justice Potter observed: "The normal rule is for no stay but where the justice of that approach is in doubt the answer may well depend on the perceived strength of the appeal."

- (b) The risk of harm is typically assessed by examining the harm or prejudice to either party if a stay is granted or refused, although there is an overarching risk of harm to the administration of justice by the prolonged delay of the resolution of a dispute. The question traditionally has been cast as where does the greater harm lie and what does the justice of the case require? It is a task of balancing alternatives, forecasting possibilities and future outcomes, and weighing in the balance risks, whether remediable and irreparable, which accompany the choice of staying or continuation of the proceedings.
- (c) A stay of proceedings as section 12 of the Court of Appeal Rules implies is the exception rather than the rule. A stay should only be granted where there are good reasons. Allen JA described it in Bimini Blue Coalition Limited v Christie Prime Minister of the Commonwealth of the Bahamas and others (above) as exceptional circumstances, for departing from the starting principle that the successful party should not be deprived of the fruits of a judgment in favour, or, as in this case, that Mr. Morley should not give evidence at the trial.
- (d) Accordingly, it is for the applicant to make good its case for a stay. It must condescend to particulars to demonstrate a good reason for a stay.
- (e) There must be a good arguable case or a good prospects of success on the appeal.
- (f) Further, it is not simply a matter for the intended appellant to baldly state that there are good prospects of success of an appeal; the applicant must demonstrate its chances of success based upon the material before the Court. The Court should be alert to tactical delays by appellants trying to avoid the consequences of the lower courts' orders. Importantly, evidence in support of an application for a stay must be full, frank and clear. See: Hammond Suddard Solicitors v Agrichem International Holdings Ltd. [2001] All ER (D) 258. The applicant must condescend to particulars to assist the Court in determining good prospects of success and where the balance of justice will lie. The applicant must provide the Court with as much assistance as possible for it to draw the reasonable inferences that the risk of injustice would lie in refusing the stay based upon a consideration of these factors.
- (g) Factors that weigh in determining the relative risks of injustice will be whether the appeal will be rendered nugatory, whether the applicant would suffer uncompensatable loss, and whether there are special circumstances warranting the court's intervention to stay the proceedings.

18. These factors are considered in the round and the relevant questions here on this application, no doubt, will be whether the justice of the approach that there be no stay is in doubt? Is there merit in this intended appeal? Is there a greater relative risk of injustice to the intended appellant if this stay is granted?

19. These general principles finds its legs in the authorities cited above were encapsulated in the general principles addressed in the parties' submissions on the question whether a stay should be granted by considering these main

questions (a) whether the appeal has a good prospect of success; (b) whether the appeal will be rendered nugatory if a stay is not granted and, generally, (c) where does the greater risk of injustice lie between the parties if a stay is granted or refused. These questions, of course, must be taken in the round in the courts' exercise of its discretion." [Emphasis supplied]

10. In *Palm Cay*, Kokoram JA further observed (at para.20) that it is often inappropriate to conduct a minute examination of the merits of the proposed appeal in determining its prospects of success for the purposes of a stay application. Usually, a preliminary assessment of the merits is sufficient.
11. Article 28 of the Constitution permits a person alleging that a protected constitutional right has been, is being, or is likely to be contravened to seek redress in the Supreme Court. The jurisdiction may be invoked by motion in existing proceedings; a separate originating process is not invariably required (see *Jean-Rony Jean Charles v. Bethel* [2022] UKPC 51, [20]–[24]). However, flexibility in form does not dispense with fairness to the persons against whom relief is sought, nor does it transform an ordinary interlocutory disagreement into a constitutional breach.

#### **Grounds of Appeal**

12. SCRL provided a draft Notice of Appeal (see *Affidavit of Jeffrey Byron Clark, Jr. filed 8 September 2026, Exhibit JC13*). This contains a total of 60 proposed grounds, falling into five main categories.

##### *(i) Expert evidence was wrongly excluded (Grounds 1–29)*

13. The Applicant alleges that the Court misapplied the test for admitting expert evidence in judicial review. It says the reports were reasonably required to assist the Court on technical issues concerning environmental assessment, consultation fairness, salami-slicing, adequacy of information, material considerations and rationality.
14. SCRL argues that the Court wrongly: treated the reports as an attempt to re-argue environmental merits; failed to distinguish irrationality grounds from consultation-unfairness and information-adequacy grounds; treated existing technical material as a substitute for independent expert evidence, although the adequacy of that material is itself challenged; placed excessive weight on lateness despite staged disclosure, evolving evidence, vacated trial dates and JR2's later consolidation; treated objections about international standards, competing opinions, other regulatory remit or report scope as grounds for wholesale exclusion rather than matters of weight or limitation; and failed to address the alleged imbalance created by permitting post-decision evidence from Dr. Neely-Murphy while refusing the Applicant's expert evidence.

##### *(ii) The refusal of amendments was inconsistent with the permitted case (Grounds 30–48)*

15. The Applicant contends that the Court allowed core allegations on salami-slicing, consultation, adequacy of information, rationality and "paper chase", but wrongly excluded the expert evidence and amendments said to be needed to explain and advance those allegations.
16. It contends that the refused allegations concerning CEC 2400 and CEC 2400A were not separate, out of time direct challenges. Rather, they were contextual allegations

necessary to explain the relationship among CECs 2400, 2400A, 2884 and 2894, and the alleged fragmentation of assessment and consultation.

17. The Applicant further challenges the finding that the scope of CECs 2400 and 2400A was clear on their face and that the amendments were not prompt, relying on later disclosure of the CEC application, BRON Report and extension materials.

*(iii) The Directions Order risks defeating the proposed appeal (Grounds 49–56)*

18. The Applicant challenges the directions fixing the consolidated judicial reviews for hearing before the intended appeal is determined. It contends that the substantive hearing may proceed on an incomplete evidential and pleaded basis, making a later appeal ineffective or requiring a retrial. It says the Court gave insufficient weight to the consolidation of JR1 and JR2, unresolved disclosure and interlocutory issues and the need to determine the evidential and pleading issues first.

*(iv) Public importance (Grounds 57–59)*

19. The Applicant contends the appeal raises a broader issue requiring appellate guidance; namely, when expert evidence may be admitted in an environmental judicial review, particularly under the EPPA and EIA Regulations.

*(v) General ground (Ground 60)*

20. The Applicant contends generally that the rulings refusing expert evidence and the remaining amendments were wrong in law, fact, or principle; unfair; and/or outside the proper limits of case-management discretion.

### **Expert Evidence**

21. The Applicant's principal submission is that, in its ruling of 3 September 2026, the Court misapplied *Law Society* by treating "*incontrovertibility*" as a universal precondition for the admission of expert evidence in judicial review. It submits that the incontrovertibility restriction identified in *Law Society* only applies to an irrationality allegation founded on a serious technical error, whereas its consultation grounds concern the materiality of allegedly undisclosed information. The Applicant submits that the Court therefore permitted consultation-fairness allegations to proceed while excluding the evidence necessary to establish their technical significance.
22. In *Law Society*, the reference to a serious technical error being "*incontrovertible*" is stated in the context of an irrationality challenge. Paragraph 42 then identifies consultation unfairness caused by non-disclosure of important technical information as a distinct issue on which expert evidence may, in principle, assist in illustrating representations that could have been made and their materiality. It may therefore be arguable that incontrovertibility is not a necessary condition of admissibility for every report tendered in support of a consultation case.
23. That conclusion does not, however, inexorably mean that leave must be given. Read as a whole, the Court's decision to refuse permission to adduce the six expert reports did not rest upon incontrovertibility alone. The Court gave four independent bases for refusal: (i)

the applications were exceedingly late; (ii) the reports were not reasonably required because SCRL had made extensive scientific and technical consultation representations addressing many of the same subjects; (iii) substantial parts of the reports invited an assessment of whether the EIA and EMP were scientifically exhaustive, whether another methodology was preferable, the acceptability of environmental impacts, and the sufficiency of mitigation – which are normally matters of environmental merits rather than judicial review; and (iv) admission shortly before trial, after extensive preparation, would prejudice the Respondents and good administration.

24. Those were not merely matters listed by the Respondents. They were findings made in the ruling under challenge. The Court identified the particular scientific and technical submissions made by SCRL during consultation; found that the reports' possible utility in a merits-based Planning and Subdivision Appeal Board challenge did not establish their necessity in these judicial review claims; and concluded that their admission risked a full re-run of the CEC merits.
25. The Court also gave report-specific reasons. Dr. Dahlgren acknowledged a range of professional opinion; Mr. Gash and Mr. Baker professed to apply a significantly higher international benchmark than the domestic statutory regime; Mr. Williamson did not identify any centrally material technical error and addressed matters potentially within other regulators' remit; Mr. Harris's report repeated earlier Smith Warner analyses and his firm had previously made partisan consultation submissions; and Mr. Carpenter's report was largely directed to the adequacy of the EIA, while acknowledging that relevant environmental impacts were identified.
26. The lateness finding was likewise an independent basis for refusing admission. It bears pointing out that the reports were served in June 2026, about ten months after the proceedings commenced and shortly before the July fixture. Their predominant focus was EIA Revision 2, of which SCRL had been aware since July 2025. The Court considered the explanation advanced and found it inadequate. The subsequent vacating of the July fixture did not remove the delay found when permission was sought to introduce the reports, nor did it deprive the Court of its case management powers in relation to the September fixture.
27. In this state of affairs as a whole, the Applicants have not satisfied me that the refusal to admit the expert reports was outside the ambit of judicial discretion and plainly wrong.

#### **Remaining Amendments**

28. It is worth noting that the Court in its ruling did not refuse permission to amend generally. It permitted extensive amendments directed to the alleged salami-slicing of the project, consultation fairness, the alleged "*treasure hunt*" and "*paper chase*" adequacy of information, material considerations, rationality and enforcement. It also permitted amendments addressing the contextual reference to CECs 2400 and 2400A where this bore directly on the lawfulness of the impugned CEC decisions, including their alleged omission from material provided to consultees.
29. The amendments refused were amendments the Court found, in substance, to be freestanding challenges to CEC 2400, CEC 2400A or CEC 2400A's purported extension. These included allegations that no EIA, EMP or consultation was required by DEPP or carried out; that decisions were predetermined in secret; that there was no application;

and that the Director did not conduct or consider internal assessments. Those allegations, in the Court's view, sought direct adjudication of the legality of earlier CEC decisions and engaged CPR 54.4.

30. Promptitude was also in issue. CEC 2400 was exhibited in an affidavit filed in the action in October 2025 and CEC 2400A was known to SCRL by 22 July 2025. The Court found that their scope was stated on their face. The later-disclosed BRON Report and the Director's explanation may have added detail, but did not create the core alleged grounds that no EIA or consultation had preceded the earlier decisions.
31. Further, the extension of CEC 2400A was already the subject of JR2, whereas the Court found the revoked CEC 2400 to be academic as a direct target of review. The Court's ruling thereby sought to confine the consolidated proceedings to the extant CEC decisions (i.e. CECs 2884 and 2894) while preserving the contextual allegations relevant to them. I am not satisfied that this case management approach discloses any realistic appellate error.

#### **Public Interest and Clarification of the Law**

32. I readily accept that environmental protection and lawful environmental decision-making are matters of considerable public importance. However, the proposed appeal concerns the application of settled principles on expert evidence, amendments and case management to this particular litigation. Environmental importance alone does not turn the Court's interlocutory procedural rulings into a question requiring appellate clarification.
33. I do not therefore accept that the public interest or law-clarification exceptions provide a basis for the grant of leave.

#### **Stay of Proceedings**

34. Leave to appeal having been refused, I see no basis for ordering a stay of the proceedings. I nevertheless consider the balance of justice, including the possibility of an application to the Court of Appeal.
35. The substantive hearing is fixed for the week commencing 28 September 2026. The proceedings have already suffered delay arising from previous interlocutory applications, which necessitated prior adjournments. I give substantial weight to the imperative for these consolidated judicial review proceedings to proceed toward a substantive determination.
36. The Applicant submits that a trial without the disputed evidence and amendments will render an appeal nugatory. I do not accept that submission. The Court of Appeal would retain its ordinary powers to set aside, vary or remit any decision if a material appellate error were later established. The possibility that further proceedings might be required does not itself make the appellate remedy nugatory.
37. The Applicant's argument that the Developers may be unable immediately to undertake development works because additional approvals remain outstanding does not resolve the stay application. The Respondents, the Court and the public have a legitimate interest in a timely judicial determination of the extant challenges. The Court should also strive to

preserve the fixture after substantial preparations have been undertaken, absent a compelling reason to postpone it.

38. Having regard to the factors set out above, the balance of justice in my view favours maintaining the listed hearing. The application for a stay is accordingly refused.

### **Applicant's Recourse to the Constitution**

39. The Applicant relies on Article 28 of the Constitution in its *submissions* and asserts that holding a trial on 28 September 2026 as scheduled would contravene Article 20(8), because it would proceed without the six expert reports, without the refused amendments, without further directions in JR2 and before the proposed appeal could be determined.
40. I accept that in *Jean-Rony Jean Charles v. Bethel* [2022] UKPC 51, [20]–[24], the Privy Council confirmed that Article 28 does not prescribe a single mandatory procedural form for seeking constitutional redress. This arguably establishes the formal competence of the method employed by the Applicant in seeking redress. It does not, however, establish either a constitutional breach or the appropriateness of the relief sought.
41. Article 20(8) guarantees a fair hearing. It is my understanding that the fairness of the proceedings must be assessed as a whole, taking account of the Court's lawful powers to control pleadings, evidence, timetables and the conduct of litigation. Albeit stated in the context of a claim relating to loss of liberty, the following comments of the Privy Council in *Independent Publishing Company Ltd. v. Attorney General of Trinidad and Tobago and Ors.* [2004] UKPC 26, [88]–[92], are apposite:

*"[88.] In deciding whether someone's section 4(a) "right not to be deprived [of their liberty] except by due process of law" has been violated, it is the legal system as a whole which must be looked at, not merely one part of it. The fundamental right, as Lord Diplock put it, is to "a legal system...that is fair". Where, as in Mr. Maharaj's case, there was no avenue of redress (save only by special leave direct to the Privy Council from a manifestly unfair committal to prison), then, despite Lord Hailsham's misgivings on the point, one can understand why the legal system should be characterised as unfair. Where, however, as in the present case, Mr. Ali was able to secure his release on bail within 4 days of his committal—indeed, within only one day of his appeal to the Court of Appeal—their Lordships would hold the legal system to be a fair one.*

...

*[92] ...given that Mr. Ali had a right of appeal, their Lordships regard him as having enjoyed the benefit of due process. As in Hinds, so too here: any shortcomings in the first hearing could be made good on the appeal and by the grant of bail meanwhile. The system as a whole was fair."*

(Followed locally by Klein J. in *Kranston Key and Ors. v. Stipendiary and Circuit Magistrate Rolle-Davis and Attorney General* 2018/PUB/Con/00038)

42. The Applicant has been permitted to pursue significant aspects of its amended case. It has had the opportunity to make technical representations during the consultation process, to advance its judicial review grounds, to seek and obtain amendments on multiple occasions, to apply for permission to adduce expert evidence and to make detailed submissions and file evidence on each application it has pursued. Subject to leave being obtained, it also has a right of appeal to the Court of Appeal. I am not persuaded that the Court's refusal of selected amendments and of permission to adduce

the expert reports does not, of itself, render the contemplated substantive hearing unfair and give rise to a separate constitutional infringement.

43. The Applicant also refers to the short time for appealing before the fixture. The possibility of pursuing further leave or a stay in the Court of Appeal remains governed by the applicable appellate procedures. The fact that an appeal cannot be heard before the substantive hearing does not convert the ordinary consequences of the Court's refusal of interlocutory relief into a constitutional breach.
44. Very importantly, Article 28(2) also requires the Court to consider whether adequate means of redress are available in the circumstances. This was discussed recently in *Farrington v. R.* [2025] UKPC 21, where Lord Stephens stated as follows (at paras.80-81):

*"80. In The Bahamas, the proviso to article 28(2) of the Constitution provides that where the court is satisfied that adequate means of redress are available elsewhere it "shall not" grant any relief under article 28(2). If there is doubt as to the adequacy of the alternative means of redress, so that the court is not so satisfied, then the possibility of constitutional relief remains open. However, if the court is so satisfied, then the proviso shuts out completely the grant of constitutional redress.*

*81. The rationale underpinning the proviso to article 28(2) of the Constitution of The Bahamas is the same rationale that underpins the discretion under the Constitution of Trinidad & Tobago, namely, to prevent "misuse, or abuse, of the court's process." The proviso to article 28(2) in The Bahamas and the discretion of Trinidad and Tobago are both forms of the abuse of process doctrine. However, in The Bahamas the parameters of the abuse of process doctrine is fixed by the Constitution. The proviso is expressed in mandatory terms so that circumventing another adequate means of redress and instead seeking constitutional redress is an abuse of process." [Emphasis supplied]*

45. SCRL argues that, in the event of the Court refusing leave and a stay, it seeks the grant of a stay pursuant Article 28 (see *SCRL's Submissions*, para.15.4). The ultimate relief therefore sought is a stay until it can apply to the Court of Appeal for leave and, if leave is granted, until determination of that appeal. I accept the submission of the Developers that this would appear to potentially entail invoking Article 28 to obtain, by another route, relief which the Court has already determined should not be granted in the exercise of its ordinary jurisdiction, and that this what the Article 28(2) proviso precludes.
46. SCRL further contends that the remedy of an appeal is inadequate because, if the Court refuses leave and a stay, there may be insufficient time before the trial on 28 September 2026 to seek such relief from the Court of Appeal. The difficulty I have with this argument is that if it is subsequently determined that this Court wrongly refused amendments, wrongly excluded expert evidence and wrongly fixed the trial date, this would constitute judicial error. The appellate process provides a remedy for such errors. SCRL therefore has a potential remedy open to it if this eventuality occurs. SCRL may also seek an expedited determination of such application and/or interim relief from the Court of Appeal. It also bears pointing out that SCRL may ultimately prevail in the judicial reviews.
47. I also accept the force of the Developers' submission that it would be highly undesirable for a party to be entitled to invoke Article 28 whenever it is considered that an appeal might

not be heard quickly enough or might not result in a stay. This could potentially contradict the effect of proviso Article 28(2), which cannot be right.

48. SCRL claims the substantive hearing will be unfair because it cannot rely upon six expert reports and cannot advance a case based on amendments which this Court has refused. This is, in effect, a complaint that the Court's interlocutory or case management rulings were wrong. As indicated, if those rulings were wrong, the appellate process exists to correct them. The assertion that a ruling was made in error does not, in itself, establish that a trial or substantive hearing conducted in accordance with that ruling is a breach of Article 20(8).
49. In the circumstances, I am not satisfied that the Applicant's reliance on Article 20(8) justifies the grant of a stay.

**Disposition**

50. For all of the foregoing reasons:
- (i) the application for leave to appeal from the ruling of 3 September 2026 and the directions order of 26 August 2026 is refused;
  - (ii) the application for a stay of the consolidated proceedings and of the substantive hearing fixed for the week commencing 28 September 2026 is refused;
  - (iii) costs are awarded to the Government Respondents and the Developers, to be assessed if not agreed, certified fit for two counsel.

