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

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

Before: The Honourable Mr. Justice Leif Farquharson

Appearances: Frederick Smith KC, Peter Village 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 and David Higgins 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, Edward Marshall II and Bryann Hepburn for the 9th – 10th Respondents in Claim No.2025/PUB/jrv/00020 and for the 7th Respondent in Claim No.2025/PUB/jrv/00022

Heard on the papers

RULING

Applications Before the Court

1. By Notice of Application filed on 6 July 2026, Sampson Cay Retreat Limited ("***SCRL***") seeks orders for specific disclosure of documents against the Government Respondents and the Developers in Action No.2025/PUB/jrv/00020. The documents of which disclosure is sought principally relate to (i) a solar proposal or *'solar farm'* in connection with the proposed development, (ii) a permit to harvest protected trees issued by the Director of Forestry to the Developers, (iii) an *'environmental bond'* referred to in Certificates of Environmental Clearance ("***CECs***") 2400A and 2894, and (iv) an *'Enabling Works Method Statement'* prepared by the Developers' environmental consultants, BRON Ltd. ("***BRON***"), and exhibited in the 3rd Affidavit of Dr. Rhianna Neely-Murphy, the Director of the Department of Environmental Planning and Protection ("***DEPP***"), filed on 23 March 2026. The application is 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.

2. By Notice of Application filed on 8 July 2026, Yonder Holdings Ltd. ("***Yonder***") made an application which, for all intents, is identical to SCRL's.

3. This is not the first application for specific disclosure by the Applicants in these judicial review claims. By Ruling dated 1 June 2026, I ruled on an earlier application for specific

disclosure by SCRL and Yonder, respectively. In doing so, both applications were dismissed as against the Government Respondents and very limited further disclosure was ordered against the Developers.

4. For the reasons which follow, I am not prepared to make the disclosure orders sought.

Affidavit Evidence

SCRL and Yonder's Affidavit Evidence

5. SCRL's application is supported by the thirteenth affidavit of Jeffrey Byron Clark Jr., Director and CFO of SCRL, filed on 6 July 2026. Yonder's application is supported by the eleventh affidavit of Darla Tollefson, Director and President of Yonder, filed on 8 July 2026, which is in nearly identical terms to Mr. Clark's affidavit.

6. In summary, Mr. Clark and Ms. Toleffson contend that the duty of candour requires the Respondents to make full disclosure of all materials considered, reviewed, generated or relied on in the decision-making process. They assert that further material has emerged since the first disclosure applications, revealing additional, apparently undisclosed categories of documents. They both maintain that the record remains materially incomplete.

7. As it relates to the proposed solar proposal or solar farm, Mr. Clark and Ms. Toleffson say that this only came to light during a site inspection on 10 June 2026 in connection with parallel pending statutory appeal proceedings, when one of the attorneys for the Developers stated that an application had been made in relation to a proposed solar farm to be located on 22 acres of land on the northwest portion of Big Sampson Cay, for the purpose of providing energy to the development. The affiants say the previously disclosed environmental materials contemplated renewable energy infrastructure, including solar panels and battery systems, supplying at least 30% of projected power demand. They assert that the solar farm proposal may therefore be either: the proposal already assessed; a revised or expanded proposal; or a distinct project requiring separate assessment and approval.

8. Both affiants contend that, if the solar facility is integral to the overall project, its separate treatment could amount to *'salami slicing'*, which they describe as the process of artificially dividing a large, single development project into smaller component parts to avoid triggering EIA thresholds or other regulatory requirements. Accordingly, they seek all applications, plans, assessments, correspondence, governmental communications, approvals, decision records, and documents addressing whether the solar proposal was assessed as part of the whole development, included in the EIA/EMP and consultation process, or treated as a standalone or phased component.

9. As it relates to underlying materials referred to in BRON's Enabling Works Method Statement Report (which was disclosed and discussed in the third affidavit of Dr. Neely-Murphy), the affiants state that this request refers to technical material that has not been disclosed. This includes: a geotechnical investigations report; a geotechnical memo; agreed and unagreed terms of reference for the EIA, its revisions and the EMP; and terms of reference for BRON's own Enabling Works Method Statement.

10. The affiants further state that the BRON Enabling Works Method Statement relies on a *'Permit to Harvest Protected Trees'* issued by the Forestry Unit. They both profess an understanding that the permit expired and say that they are unaware of a renewal, extension, replacement or new permit authorising ongoing clearing, vegetation removal, protected tree removal, relocation or nursery activity at East Sampson Cay.

11. SCRL and Yonder accordingly seek disclosure of, among other things: the original forestry permit and all conditions attached thereto; documents showing the date of expiry; applications and decisions on renewal, extension or variation; evidence of post-expiry authorisation; correspondence; tree inventories and relocation, nursery and replanting records; compliance and enforcement records; and all reports, field notes, photographs, videos, communications and other records of Forestry Unit inspections or visits.

12. The stated relevance is that those records may establish whether the Developers complied with permit conditions, continued work after expiry, removed or relocated protected trees or vegetation, established any required nursery and whether public authorities authorised, monitored, waived, varied or enforced compliance.

13. As it relates to the environmental bond, Mr. Clark and Ms. Toleffson refer to conditions in CECs 2400A and 2894 stating that an environmental bond was required and that DEPP would advise the Developers "*under separate communication*". The affiants say no related material has been disclosed. SCRL and Yonder therefore seek the "*separate communication*" referred to, correspondence with DEPP, any calculation or assessment of the bond amount, draft or executed bond/security documentation, and material showing whether the bond was provided, accepted, waived, amended, or discharged.

14. Both affiants exhibit a letter by SCRL's attorneys to the Government and Developer Respondents' attorneys dated 18 June 2026, requesting the solar-related material and a substantive response within 48 hours. Yonder's attorneys were copied on the letter as well. They exhibit the Developer Respondents' reply of 19 June 2026 refusing disclosure. Mr. Clarke indicates that the Government Respondents had not responded as at the date of his affidavit.

15. SCRL and Yonder assert that the requested material is directly relevant to their pleaded judicial review grounds and the fair trial of their claims

Government Respondents' Affidavit Evidence

16. In resisting the applications, the Government Respondents rely on the fourth affidavit of Dr. Rhianna Neely-Murphy and the first affidavit of Danielle Hanek, the Acting Director of the Forestry Unit in the Ministry of the Environment and Natural Resources (the "***Forestry Unit***"), both filed on 22 July 2026.

17. Dr. Neely-Murphy's affidavit is narrowly focused and addresses the request for disclosure of documents relating to the solar proposal. She also provides an update on certain events occurring at the development site from the standpoint of DEPP. She confirms that Sampson Cay Bahamas Limited has applied to DEPP for approval in respect of a proposed solar-panel installation and related works. She says DEPP has not yet considered the application and has not communicated a decision or response

to the Developers. She confirms that the EIA and EMP for the project envisaged solar energy supplying at least 30% of the development's power demand. She further says that when DEPP considers the application, it will assess the design and siting of the panels for environmental compatibility and impose appropriate environmental conditions in the ordinary course. She also exhibits a copy of Sampson Cay Bahamas Limited's application, which is dated 18 May 2026 and stamped as being received by DEPP on 19 May 2026.

18. Dr. Neely-Murphy further speaks to becoming aware on or about 7 July 2026 of social media videos showing a sediment plume during barge delivery of materials to East Sampson Cay. She states that the videos appeared to show that a silt-curtain was deployed but had been ineffective. She confirms that because of that concern, she called the Developers' environmental consultants, BRON, to a meeting on 9 July 2026 and directed that the existing delivery method not continue until a solution was agreed. Following the meeting, a floating-dock was installed. The stated purpose is to enable barges to remain afloat rather than come into direct contact with the beach and seabed, thereby reducing the risk of a further sediment plume.

19. Ms. Hanek's affidavit addresses: the legislative and regulatory framework relating to protected trees; standard criteria applied to applications for permits to harvest protected trees; the Developers' application to harvest protected trees and the decision-making process with respect thereto; an error in the original permit and the correction of the same; the basis of the Forestry Unit's calculation of the figure of 15,677 protected trees within the development area and standing to be impacted; the basis of the Forestry Unit's calculation of the projected mortality figure of 784 trees; the ecological context for the exercise of the Forestry Unit's discretion; and the methodology used to calculate the fee payable by the Developers for their permit to harvest protected trees. Ms. Hanek also exhibits in evidence the Developers' Protected Tree Harvesting Application dated 6 May 2024 and supporting documents, her letter of 21 June 2024 confirming the Forestry Unit's support of the application (subject to fulfillment of specified conditions, inclusive of payment of a fee based on prescribed criteria), and the original permit issued on 26 June 2025 and re-issued the same day following discovery that it was not coterminous with the project CEC, as is the norm. She also exhibits a revised permit, with the correct species and tree figures identified, dated 21 July 2026.

20. A full discussion of Ms. Hanek's affidavit is unnecessary for immediate purposes. I would, however, refer to portions of her evidence on the calculation of the figure of 15,677 protected trees, the mortality figure of 784 trees and the methodology of calculation of the permit fee, seeing that these issues featured extensively in the submissions of the Applicants. In this regard, Ms. Hanek deposed as follows:

> *"**How the Figure of 15,677 Protected Trees Was Determined***
> *12. The figure of 15,677 is the estimated number of protected trees present within, and therefore affected by, the area to be directly impacted by the development. It was derived from a field-based sampling and extrapolation methodology: the population of protected plants was extrapolated from forty-four (44) 0.1-acre sample plots randomly distributed within the approximately 125 acres of vegetation on the site, of which approximately 19.4 acres are to be directly impacted for roads and building infrastructure. On that basis it was estimated that 15,677 protected trees would be affected, comprising the following:*

....

13. The figure is therefore not an arbitrary count but the product of a recognised sampling-and-extrapolation approach: a randomised sample of plots was used to establish species densities, which were then extrapolated across the area to be directly impacted. Although the majority of the impacted species are trees or tree species, the estimates also include plants such as Sea Oats, consistent with the broad definition of "tree" under the Order (see paragraph 2). This is the same species breakdown reflected in the 21 June 2024 Letter.

How the Projected Mortality Figure of 784 Trees Was Calculated

14. The figure of 15,677 and the projected mortality figure of 784 measure two different things, and there is no inconsistency between them. The 15,677 figure is the number of protected trees affected by (that is, growing within) the area to be directly impacted. It is not a projection that 15,677 trees would die or be permanently lost. The substantial majority of those affected trees are to be preserved: seeds, seedlings, saplings, and viable specimens are to be collected before land clearing and transplanted, propagated at a purpose-built nursery, and returned to the site.

15. The projected mortality figure represents only those trees not expected to survive despite that transplantation and replanting. A projected mortality rate of approximately five percent (5%) was applied to the affected population to reflect the losses anticipated notwithstanding the relocation and replanting operations. Applying that rate to the estimated 15,677 affected trees yields a projected mortality of approximately 784 trees:

15,677 × 5% ~ 784 trees

16. The 784 figure is therefore the product of the affected-tree estimate and the anticipated 5% mortality rate. So understood, the two figures are readily reconciled: 15,677 protected trees are affected; approximately 95% of them are expected to be preserved through transplantation and replanting; and approximately 784(5%) are projected not to survive. The mortality estimate is not a substitute for, or an understatement of, the number of affected trees; it is a distinct measure of anticipated loss, and it takes account of the conservation measures proposed, including replanting initiatives designed to increase the overall number of trees on and around the site.

....

The Methodology Used to Calculate the Fee Payable

20. Fees for a Permit to Harvest Protected Trees are assessed on a per-tree basis, at a rate of $100 per harvested tree. The fee payable was not, however, arrived at by simply multiplying the 15,677 affected trees by that rate, because the great majority of the affected trees are not harvested or lost at all - they are transplanted, propagated, and returned to the site. The fee attaches to the trees actually removed and lost, not to every tree growing within the impacted footprint.

21. In assessing the fee, the Forestry Unit took the following matters into account:

a. the population estimate of 15,677 protected trees affected, derived as set out in paragraph 11;

b. the projected mortality of approximately 784 trees, reflecting that the substantial majority of the affected trees are to be preserved through transplantation and replanting rather than removed or lost (paragraphs 13-15);

c. the conservation, transplantation, replanting, nursery, education, and additional-planting commitments required as conditions of the permit (paragraph 17), including the propagation of an estimated 14,000 plants and replanting initiatives designed to increase the overall number of trees; and

d. the developer's removal of invasive alien species, credited in light of the significant cost involved (approximately $4,000 per tree).

22. The fee was accordingly structured to reflect the trees genuinely harvested and lost, and to give the developer a positive incentive to transplant and replant protected trees rather than remove them, backed by the mandatory conditions and the availability of penalties for non-compliance (paragraph 17). It is for that reason - the preservation of the majority of the affected trees and the substantial conservation value delivered by the required measures — that the fee is lower than it would be if all 15,677 affected trees were treated as harvested. That outcome is a deliberate feature of an approach directed at promoting conservation and mitigation, not an artificial understatement of the number of affected trees. The specific fee figure and its components are set out in the 21 June 2024 Letter and the permit dated 26 June 2025."

Developers' Affidavit Evidence

21. The Developers relied on the eighth affidavit of Felipe MacLean, President and Director of Sampson Cay Bahamas Ltd., filed on 23 July 2026, in resisting the two applications. In short, Mr. MacLean confirms that certain documents arose after the first disclosure applications by SCRL and Yonder, which the Developers intend to disclose. He confirms that these include the documents sought in SCRL's letter of 18 June 2026. He exhibits documents in connection with the solar farm application, which he confirms represent the entirety of the material submitted by the Developers to DEPP. He also exhibits all applications to harvest protected trees submitted by the Developers and all permits issued by the Forestry Department.

22. Mr. MacLean confirms that, as of the date of swearing, no decision had been on the application for the proposed solar farm. He also confirms that the Developers have been unable to pay the environmental bond referred to in CECs 2400 and 2400A due to DEPP not having the necessary institutional framework in place to facilitate such payment. He further observes that the broad array of documents requested in paragraph 1.13 of SCRL's Notice of Application (paragraph 1.1.3 of Yonder's Notice of Application) are the same documents sought in their first round of disclosure, which were ultimately refused.

Discussion and Analysis

23. The applicable principles are not in dispute and are addressed in paragraphs 20-26 of my ruling on the first round of specific disclosure applications, which is adopted herein.

In short, disclosure is not automatic in judicial review proceedings. The duty of candour requires a public authority to assist the Court with full and accurate explanations of facts material to the issues which the Court must decide. 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*" (Tweed v. Parades Commission [2007] 2 All ER 273, Lord Bingham at para.3). The Court must also guard against "*'fishing expeditions' for adventitious further grounds of challenge* (Tweed, Lord Brown at para.56). See also the decision of the Competition Appeal Tribunal in Ecolab Inc. v. Competition and Markets Authority [2020] Bus LR 1030, at para.17, for a convenient summary of a number of the guiding principles.

The Solar Proposal

24. The Applicants submit that the solar farm proposal is a further instance of alleged "*salami-slicing*" and seek documents showing whether, when and why DEPP took steps concerning the application, including communications with the Developers and the reason the solar farm was not included in the earlier CEC application.

25. In my view, there is no basis for an additional disclosure order in respect of that request. The application itself has been exhibited. The stated project activities include clearing vegetation, excavation, site grading and installation of solar panels and related equipment for the operation of a solar farm and power generation at the proposed resort. Dr. Neely-Murphy's evidence is direct: DEPP has received the application, but has not considered it and has not communicated a response to the Developers. Mr. MacLean likewise states that the exhibited documents represent the entirety of the material submitted by the Developers to DEPP in connection with the proposed solar farm, for which no decision has been made.

26. In these circumstances, the premise that there are undisclosed decision-making materials concerning the solar farm application is not made out. I also struggle to see how later correspondence concerning the proposed solar farm is necessary to determine the lawfulness of CECs 2884 and 2894 granted in June 2025, including the allegation of unlawful salami-slicing, as to which there is ample material before the Court. Certainly, there is no evident necessity of ordering further disclosure beyond the material already provided in relation to the solar proposal to resolve the current dispute fairly.

27. The further disclosure in relation to the solar farm or proposal is therefore refused. To the extent the underlying application and supporting material are sought, they have already been provided. To the extent that the request extends beyond those materials, it is speculative and not necessary to determine the lawfulness of the impugned CECs.

Forestry Permit

28. The Applicants invite the Court to order disclosure of environmental documentation, maps, inventories, mitigation material, assessments and records said to relate to the Forestry Unit's decision to grant protected tree harvesting permits. They criticise, in particular, the estimated number of affected plants, the projected 5% mortality rate, the permit fee and the circumstances in which the Developers' permit was corrected.

29. In my view, these matters do not provide a proper basis for the requested disclosure. The lawfulness of the protected tree harvesting permits is not challenged and no relief is sought to quash or otherwise impugn them. The Director of Forestry is not a respondent to either claim. The references to the permits merely form part of the pleaded factual background.

30. Moreover, Ms. Hanek has provided a very detailed explanation and exhibited the relevant application, the 21 June 2024 letter and the permits to harvest protected trees. She candidly explained that the corrected permit was issued after errors in the original schedules and certain mitigation conditions were identified. Her evidence also distinguishes between the estimated population within the directly affected area and projected mortality following preservation, translocation, propagation and replanting measures. She explains that the estimate of 15,677 impacted protected trees was produced through sampling and extrapolation, while the 784 mortality figure reflects a projected mortality rate of about five per cent. She also explains the calculation of the permit fee.

31. The Applicants have not demonstrated that the additional records sought are relevant, still less necessary, to fairly resolve the judicial review claims. The request is accordingly refused.

The Environmental Bond

32. The Applicants submit that the non-payment of the environmental bond, which is a mandatory condition, requires fuller explanation and disclosure. They contend that the explanation attributed to DEPP, that the relevant institutional framework was not in place, is inadequate.

33. The evidence is that the bond has not been paid because, following a telephone inquiry by BRON on 2 July 2025, DEPP informed BRON that the institutional framework needed to facilitate payment was not in place (see 8th Affidavit of Felipe MacLean, para.12).

34. Whether a bond was paid after the impugned CECs were issued, and the explanation for non-payment, does not bear upon the lawfulness of those CECs. The issues raised by the claims primarily concern the adequacy of the environmental assessments and public consultation process. I accept the Respondents' submission that the subsequent payment of a bond is largely irrelevant to the issues in the claims. Nor is non-payment of the bond pleaded as an independent ground of challenge.

35. The requested further disclosure concerning the environmental bond is accordingly refused.

The Residual Requests

36. The residual categories seek a very wide range of drafts, internal notes, Whatsapp messages, emails, memoranda, modelling data, assessments and other material concerning a multitude of approvals, studies, site visits, consultation, technical matters and objections.

37. The Government Respondents and the Developers submit, and I accept, that this substantially repeats the broad disclosure previously sought by the Applicants and refused on the first disclosure applications. The documents sought by SCRL in paragraph 1.1.4 of the Notice of Application (paragraph 1.1.3 of Yonder's Notice of Application) are the same documents sought by both Applicants in paragraph 1.1.3 of their first disclosure applications,[1] which were ultimately refused.

38. The applications do not in my view identify any material change of circumstances or a sufficiently focused category of documents which now makes a fresh order necessary for the fair and just resolution of the extant judicial reviews. In substance, they seek wide-ranging disclosure in relation to matters peripheral to the central pleaded cases. They also seemingly ignore the extremely fulsome record already before the Court. That is neither a proportionate nor a necessary use of disclosure in judicial review proceedings.

39. The residual requests are accordingly refused.

Conclusion and Disposition

40. I have considered the Applicants' criticism that certain documents were produced only after the second application was filed. However, I am not satisfied that the further disclosure now sought is necessary for the fair and just determination of the judicial reviews. SCRL and Yonder's applications against the Government Respondents and the Developers are therefore dismissed. I will hear from the parties further on the issue of costs.

L. Farquharson

Farquharson, J.
10 September 2026

[1] See First Disclosure Ruling, para.4