COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

PUBLIC LAW DIVISION

2026/PUB/jrv

IN THE MATTER of an application for Judicial Review

BETWEEN

THE KING

AND

DR. RHIANNA NEELY – MURPHY

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

First Respondent

AND

REGINALD CURRY

(The developer of Seashells at Gillam Bay)

Second Respondent

***Ex Parte* SAVE GILLAM BAY COLLECTIVE LTD**

Applicant

RULING

Before: **The Honourable Mr. Justice Franklyn K M Williams KC**

Appearances: **Mr. Ian Nicholas Mitchell with him Mr. Levar Ferguson for the Applicants**

Mr. David Higgins for the First Respondent

Mr. Geoffrey Farquharson for the Second Respondent, informed; failing to appear.

Williams J.

Introduction and background

The applicant seeks leave to challenge the environmental approval(s) granted for the development known as Seashells at Gillam Bay, Green Turtle Cay, Abaco ("the Development"), and the determination antecedent thereto of the first respondent that no Environmental Impact Assessment ("EIA") was required. Further, the applicant challenges the failure of the respondents to make provision for mandatory public consultation, the failure to publish the approved Environmental Management Plan ("EMP"), and the failure to publish and make available for inspection any and all attendant statutorily required certificates.

Concurrent with its application for leave to apply for judicial review, the applicant makes application for interim injunctive relief and such other relief as may be apparent and necessary.

The application came on for hearing before myself as a without notice application on 17 September 2026. Because of the subject matter and the possible consequences of the grant of injunctive relief, I directed the applications be heard *inter partes* and that Mr. Higgins and Mr. Farquharson for the first and second respondents respectively be so informed. The hearing *inter partes* was adjourned to 22 September 2026 at 9a.m. Because of the absence of one or both counsel for the respondents, the matter was further adjourned to 28 September 2026. The substantive judicial review was set down for 11 November 2026.I am satisfied that both were so informed, Mr. Higgins for the first respondent appearing, Mr.

Farquharson for the second respondent failing to appear. I am satisfied that, save for the very first hearing before me (17 September 2026), Mr. Farquharson and hence the second respondent had, and acknowledged notice of each hearing thereafter (Affidavit of Kay Brown).

The Applicant

[1.] The applicant is a company incorporated under the laws of the Bahamas. According to the affidavit of Desmond Bain, "…the Applicant was established by Bahamian citizens, residents, homeowners, adjoining landowners and other persons having substantial and longstanding connections with Green Turtle Cay and Gillam Bay." Further, "…the Applicant was established for the purpose of protecting Gillam Bay and ensuring that decisions concerning development of the area are made lawfully, transparently and with proper regard to the environment and the interests of the community."

The Application

[2.] The Notice of Application for urgent interim injunction was filed on 1 September 2026. The Notice is supported by the Affidavit of Desmond Bain which sets out the factual basis of the application. I adopt the facts stated therein as they are not materially disputed by the first respondent or at all by the second respondent. The applicant filed a Certificate of Urgency:

"I, **I.A. Nicholas Mitchell,** Counsel and Attorney – at- Law in chambers with Messrs Callenders & Co., do certify that the application for injunctive relief filed herein is urgent on the basis that the restraint is required to avoid imminent risk of irreversible ecological harm and the continuance of what the Applicant says is a development progressing without lawful authority. The matter is of tremendous public interest in the area more particularly known as Gillam Bay."

[3.] At paragraph 1 of the Application is set out the decision to be reviewed, namely:

(a) The decision of the Respondent, made on or about 22 April 2026, to grant a Certificate of Environmental Clearance ("the 2026 CEC") for the first phase of the project known as "Seashells at Gillam Bay" at

Green Turtle Cay, Abaco ("the Project"); and

(b) The Respondent's antecedent decision, communicated publicly in July 2026, that the Project did not require an Environmental Impact Assessment and that an Environmental Baseline Assessment and Environmental Management Plan would suffice ("the no – EIA decision")

[3.] The stated grounds of challenge are:

(i) The 2026 CEC was issued before mandatory consultation

(ii) The No – EIA decision was legally misdirected and irrational

(iii) The first respondent's failure to assess the whole project

(iv) The first respondent's unlawful withholding of the environmental record.

[4.] At paragraphs 6 through 10, the applicant sets out its view of the material chronology

[5.] Finding that:

(i) the applicant has sufficient interest in the matter to which the application relates;

(ii) the application was made promptly;

(iii.) at least one arguable ground with a reasonable prospect of success

I granted leave for judicial review. Counsel for the first respondent expressly opposed the grant of interim injunctive relief on the basis that the government of the Bahamas has an interest in the success of the Gillam Bay project.

[6.] There is no dispute amongst counsel that the court has jurisdiction to grant an interim injunction. That jurisdiction is set out in s.21 of the Supreme Court Act, Chapter 53, Part 17 CPR and part 54.3 CPR. Pat 17.1 CPR provides:

> "17.1 **Orders for interim remedies: relief which may be granted.**
>
> (1) The Court may grant interim remedies including –
> (a) an interim declaration
> (b) **an interim injunction**
>
> …
>
> (2)
> (3) **The fact that a particular type of interim remedy is not listed in paragraph (1) does not affect any power that the Court may have to grant that remedy.**
> **(4) The Court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.**

17.2(2) Unless the Court otherwise directs, a party applying for an interim order under this rule must undertake to abide by any order as to damages caused by the granting or extension of the order.

17.3 Time when an order for interim remedy may be made.

(1) An order for an interim remedy may be made at any time, including –

(a) after judgement has been given; and

(b) before a claim has been filed

(2) Paragraph (1) is subject to any rule which provides otherwise.

(3) The Court may grant an interim remedy before a claim has been made only if –

(a) the matter is urgent; or it is otherwise necessary in the interests of justice.

54.3

(10) Where leave to apply for judicial review is granted, then –

(a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;

(b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ

[7.] The learned authors of Blackstone's Civil Practice 2023 discuss the issue of "urgency":

> ***"…There has to be an element of threatened damage, requiring the the immediate intervention of the court, which may occur between the without-notice hearing and the hearing of an effective application (Mayne Pharma (USA) Inc v Teva UK Ltd [2004] EWHC 324b (Ch)."***

The Project

[8.] The second respondent, Reginald Curry is the Developer or project proponent of the Project.

[9.] Readily available information posits the Project to include nine villas measuring approximately 1900 square feet each, a club house incorporating a restaurant and bar, an administrative office and a back of house facility. Also referred to are access works, moorings, a dock and "other marine or shoreline components."

[10.] A Certificate of Environmental Clearance was issued on 22 April 2026, before public consultation, and which certificate was not made available for inspection to any concerned persons and or residents of Gillam Bay

[11.] A "town hall" meeting scheduled for 16 July 2026 did not proceed, seemingly due to late, or insufficient notice, and no sufficient information presented.

[12.] At a subsequent 22 July 2026 meeting, attendees were informed that it had been determined that a full Environmental Impact Assessment was not required,

and that the "Project" required only an Environmental Baseline Assessment and Environmental Management Plan, neither of which nor the 22 April 2026 CEC were supplied to attendees.

Department of Physical Planning

[13.] The Department of Physical Planning ("DPP") produced no application in relation to the Gillam Bay development, nor does it appear that there is one, a requirement necessarily made independent of any determination to issue a CEC.

Department of Environmental Planning and Protection

[14.] There was, and there is no record of any public consultative process prior to the issue of the 22 April 2026 CEC; to be certain, there was no statutorily mandated (public) consultation.

The Certificates

[15.] The EBA/EMP refer to CECs 1348 and 1349, the former referring to limited vegetation clearance preparatory to commencement of a botanical survey, the latter referring to clearance of an access road. These CECs were granted in 2023 and have expired The 22 April 2026 CEC has not been produced, no indication to what it refers.

Failure to produce the decision making record

[16.] The first respondent has failed, and or refused to provide a record of her decision making process including the reasoning upon which the determination that no EIA was required in breach of the Environmental Planning and Protection Act, 2019. If lawfully refusing, the first respondent gives no reasons therefor.

[17.] The claimant contends that because no decision record has been produced or had access to provided, it cannot be ascertained 1) the exact works authorized; 2) the approved footprint of the project; 3) its duration; 4) its conditions; 5) the

plans incorporated into the approval; 6) any monitoring or reporting obligations; 7) whether any dock, mooring, marine, access or ancillary works are authorized.

The Environmental Character of Gillam Bay

[18.] Gillam Bay comprises coastal wetlands, mangroves, seagrass beds, and productive shallow marine waters which provide habitat for marine and terrestrial species, each component altogether sustaining the other.

[19.] A birdwatcher has documented, at Gillam Bay, during the period 27 February through 6 March 2026, fifty seven resident and migratory avian species including the Red Knot, Piping Plover, Wilson's Plover, American Kestrel, Peregine Falcon, Great Egret, Green Heron.

[20.] In contrast, the EBA/EMP records at page 17, paragraph 4.3.1 its avian assessment conducted over period of three hours, the concern arising that such summary assessment does not adequately capture the avian resident and migratory use of Gillam Bay; further, it calls into question, if not undermines the the developer's ecological baseline.

[21.] The preceding is gleaned from the affidavit of Desmond Bain ("the Bain Affidavit).

Response of Department of Environmental Planning and Protection

[22.] In an 11 September 2026 letter, the first respondent responded to the averments in the Bain affidavit ; she disputes the applicant's characterization of the 18 August 2026 interaction at the DEPP. At no time were any documents requested for public viewing, she states.

[23.] An EIA and public consultation is required in the Bahamas when the director determines that a proposed project poses a significant risk of adverse environmental impacts. The first respondent determined the Seashells project to be of low or minimal impact and therefore no EIA was required.

[24.] Further, the project has/is: 1) low density; 2) is to be built on stilts/pilings, reducing environmental impact; 3) all upland, having no marine component; 4) a more than 50 foot setback from the nearest dune or coastal area; 5) not located in or nearby any designated protected areas.

[25.] No works are proposed to be done on the dunes. The sea oats and rail road vines identified in the EBA fall outside of the footprint of the property boundaries, the endangered species do not fall within the project site boundaries; protected species lie within the dune structure. There are no protected species slated for cutting, uproot or destruction, therefore the Forestry Act is inapplicable.

[26.] DEPP did not assess any coastal features as no marine related construction activities are proposed. No wetlands fall within the boundaries of the proposed development site. The Director's assertion that there is no marine component is contradicted by references in the EBA/EMP to "moorings, a dock 'and other shoreline components'

[27.] The EMP discusses various methodologies for removal of Australian Pine; the Developer proposes mechanical removal of invasive species, seeking a burn permit for this activity. Use of chemicals is strictly prohibited.

[28.] Finally, Dr. Neely Murphy states that the Developer, having satisfied the conditions necessary for CEC approval was issued same, and DEPP gave its approval for the Project.

Second Affidavit of Desmond Bain

[29.] The Applicant repeats many of its concerns and requests for documentation, in particular the #3108 CEC granting approval for the project, and repeats its call for the first respondent's reasoning in determining that no EIA was required..

[30.] The Applicant repeats and underlines it specific concern of marine and coastline impacts; specifically, the applicant takes issue with the failure of DEPP and the first respondent to refer to and or require the necessary Department of Environmental Health Services ("DEHS"), Water and Sewerage and Ministry of Works, and Department of Physical Planning approvals in relation to the

proposed development's construction of a reverse osmosis plant, deep injection wells for effluent and effluent derived from septic tanks.

Discussion and Analysis

General principles

[31.] The parties agree that the test for grant of interlocutory relief is set out in *American Cyanamid v Ethicon*, subject to appropriate modification in the context of public law. *R (Medical Justice) v Secretary of State for the Home Department [2010] EWHC 1425* . The Court must consider:

(i) whether there is a serious question to be tried with a realistic prospect of success;

(ii) whether damages would be an adequate remedy for loss sustained by either party pending the outcome of trial;

(iii) if there is doubt as to the adequacy of remedies in damages either way, whether the balance of convenience lies in favour of granting or refusing interim relief;

(iv) any special factors to be taken into consideration.

Here, I adopt the dicta of Cotter J in *Aston v United Kingdom Council for Psychotherapy [2025] EWHC 3288:*

> ***"41. Taking the questions in turn establishing a serious issue to be tried does not require the applicant to show a prima facie case on the merits. Rather a serious issue to be tried has the same meaning as " real prospect of success" in the summary judgement context. The test is not a demanding one and serves only to exclude those cases where the claim is frivolous or vexatious, or otherwise demonstrably***

bad. …, the court should not attempt to resolve conflicts of fact on which the claims of either party may ultimately depend (by conducting a mini trial), or difficult points of law (which call for detailed argument and mature considerations); these are matters for trial.

42. …then the Court should go on to the second stage and consider whether, if the Claimant were to succeed at trial and establish a right to a permanent injunction, the Claimant would be adequately compensated by an award of damages for the loss sustained as a result the Defendant continuing to do what it should be prevented from doing . If damages would be an adequate remedy for the Claimant, and the Defendant would be in a financial position to pay, then ordinarily no injunction should be granted. If, however, damages would not adequately compensate the Claimant for the pre – trial damage, and also an award of damages would adequately compensate the Defendant in the event of the Defendant succeeding at trial, then the interim injunction may be granted. It is only where damages are inadequate on both sides that the Court proceeds to consider the balance of convenience. The factors informing the balance of convenience vary case by case.

43. The issue under balance of convenience is: "Which course carries the lower risk of injustice?". This because the court has to engage in trying to predict whether, and to what extent, the granting or withholding an injunction is likely to cause irremediable prejudice.

44. Where the interim injunction may be finally determinative of the matters in dispute between the parties, it is appropriate for the court to assess the likelihood of the Claimant succeeding when assessing the balance of convenience and to make "some sort of assessment" of the merits: see Lansing Linde Ltd v Kerr [1991] 1 WLR 251

45. Where matters are evenly balanced, it is prudent to take such steps as are calculated to preserve the status quo."

[32.] The Board in *Belize Alliance of Conservation Non Governmental Organisations v Department of The Environment* [2002] UKPC 63 discussed the specific approach to be taken in applications for injunctive relief in public law cases; such relief is discretionary and fact sensitive. The court should adopt the the course most likely to adopt a just result or minimize the risk of injustice, particularly where there are competing public interests and potentially significant financial consequences:

"***36. The court's approach to the grant of injunctive relief in public law cases was discussed (in particularly striking circumstances) by Lord Goff of Chively in R v Secretary of State for Transport, Ex p Factortame Ltd (No.2)…:***

> ***"I myself am of the opinion that in these cases, as in others, the discretion conferred upon the court cannot be fettered by a rule…***

37. ---

38. In R v Inspectorate of Pollution, Ex p Greenpeace Ltd [1994] 1 WLR 570, …a campaigning organization was challenging an official decision which, if stayed, would have adverse financial implications for a commercial company (British Nuclear Fuels plc) which was not a party to the proceedings. Brooke J had refused a stay and the Court

of Appeal upheld his decision. Glidewell LJ at p574:

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

Scoot LJ said at p.577:

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

A similar approach has been taken by the Land and Environment Court of New South Wales in Jarasius v Forestry Commission of New South Wales (unreported) 19 December 1989, Some observations of Lord Jauncey of Tullichettle in R v Secretary of State for the

Environment , Ex p Royal Society for the Protection of Birds [1997] Env LR 431, 440 are also consistent with the view that an undertaking in damages should normally be required even in a public law case with environmental implications, if the commercial interests of a third party are engaged.

39. … . The court is never exempted from the duty to do its best, on interlocutory applications with far reaching financial implications, to minimize the risk of injustice.

[33.] Preston CJ in *Tegra (NSW) Pty Limited v Gundagai Shire Council and Anor. [2007]* had this to say:

"17 In environmental cases, where public rights under environmental statutes are being enforced, no question arises as to whether an adequate remedy in damages would be available in lieu of the grant of injunction: Williams v Homestake Australia Ltd (2002) 119 LGERA 556 at 66 [53] 18 In environmental cases, irreparable harm does not need to be suffered by the applicant personally; harm to the environment and to the enforcement of the law will suffice…."

Applicant's standing

[34.] The applicant is an incorporated entity comprised o f residents of Gillam Bay, locals of Abaco and or second homeowners, and whose physical nexus to the Gillam is affected by the Project.

Serious issue to be tried

[35.] The Environmental Planning and Protection Act, 2019, the principal object of which is to protect the environment of the Bahamas whilst regulating and

sustaining the management of its resources inclusive of the public participation in environmental decision making. S.14 of the EPPA provides:

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

[36.] The CEC authorizing the current works has not been produced; rather the first respondent Director purports:

> "Based on the requirements established by the Department, the developer has fully satisfied the conditions necessary for the issuance of a CEC. Accordingly, the Department granted approval for the project. …."

[37.] The applicant alleges a number of missteps or failures in the process leading to the issuance of the CEC. The first respondent states that she has a discretion to waive EIA, and hence the requirement of public consultation in any particular circumstances. She determined, based on the developers EBA/EMP, that no EIA was necessary. The applicant says that given that the developers EMP/EBA is deficient and does not properly consider the full scope of the ecosystem of Gillam Bay, an EIA should have been mandated. The applicant points to the developer's own recognition of the existence of seagrass beds, bonefish flats, dune stabilizing native species of plants, the presence of protected species of animals and the fact that the habitat is relied on by native and migratory birds. The current works of clearing, excavation, boring of holes, pouring of concrete mooring blocks, pouring concrete columns preparatory to wall construction are being done in circumstances of "great ecological sensitivity.".

[38.] The EMP/EBA contemplates removal of vegetative covering the land area of the project. The proposed coastal setback is fifty metres, the EMP/EBA does not contemplate storm surge assessment addressing wave action and the effect, if

any of a major hurricane upon the development and the surrounding coastal landform. The EMP/EBA incorporates the use of Garlon 3A containing the herbicide Triclopyr. Triclopyr is used to control woody plants, vines and broadleaf weeds in wooded areas and aquatic sites. Acute exposure can cause severe eye damage, dizziness, respiratory and gastrointestinal irritation. Chronic effects in animals include liver and kidney damage, reproductive and developmental abnormalities. It may prove toxic to fish. The applicant states that the developer's EMP/ EBA does not propose a site specific protocol for use of this herbicide immediately adjacent to the shallow marine environment of Gillam Bay.

[38.] While the EPPA does not mandate the giving of reasons in any event of the exercise of the first respondent's discretion to waive the requirement of an EIA, the applicant says that in the attendant circumstances as it alleges, reasons therefor ought be provided. In my view, while not required by statute, it would seem to me best practice recommends the giving of reasons for waiving an EIA in this case. In my view, given the attendant circumstances, while not statutorily mandated, some more fuller reasons other than what I refer to as the formulaic, circular and *de minimis* reason given by the first respondent, should be provided; best practice so requires.

[39.] At paragraphs 30 – 32 of the 11 September 2026 letter, the first respondent writes:

> " The developer proposes construction of an RO Plant, deep injections well for any effluent, in addition another injection well is proposed for effluents derived from septic systems and therefore, in both instances these matter would be referred to the Department of Environmental Health Services, the Water and Sewerage Corporation and the Ministry Works for further review and the necessary permits and approvals."

It would seem to me that the grant or refusal of the necessary permits and approvals by or from the agencies hereto (above) referred is or should be predicate to or at the very least is to be taken into consideration before the issue of the CEC. Effluent is raw sewerage, and its disposal, if not properly managed, has the potential to adversely and irremediably impact the environment.

[40.] I remind myself that the court is not at this time conducting a hearing of the substantive matter, or determining it. I am nonetheless satisfied that the applicant has met the threshold of establishing a serious issue to be tried as it relates to the process by which the first respondent determined no EIA, and hence no public consultation required, and to issue the 26 April 2026 CEC.

Adequacy of damages

[41.] The applicant seeks relief by way of judicial review to prevent breaches of the planning and protection environmental laws of the Bahamas. The applicant says that in the absence of interlocutory relief being granted, irreversible environmental damage will be suffered in and around Gillam Bay; monetary compensation would not provide an adequate remedy if such damage occurs.

[42.] No doubt the developer would suffer financial loss if injunctive relief is granted. The applicant has offered to give an undertaking in damages. On the face of it, damages would be an adequate remedy if it is determined that injunctive relief was wrongly granted.

The balance of convenience

[43.] Here, I pause to conduct the necessary balancing exercise.

[44.] Several factors militate against the grant of injunctive relief. The Government of the Bahamas, as expressed by Mr. Higgins has determined that the proposed project will be of significant benefit to the Bahamas, and to the Abacos in particular. No doubt, the current works described by the applicant as being carried out rest upon the foundation of the issue of the 26 April 2026 CEC.

[45.] As I have noted above, the grant of injunctive relief will no doubt affect the developer financially. As the developer did not participate in these proceedings, it cannot be determined to what extent.

[46.] Again, without determining the serious issue to be tried, I apprehend that if interim relief is not granted, action on the impugned CEC will likely continue unabated .during the substantive judicial review proceedings. This has the potential to result in irremediable damage to the environment of Gillam Bay.

[47.] The substantive judicial review proceedings are to begin on 11 November 2026. I do not consider, given the evidence already placed before the court in respect thereof, that those proceedings are likely to be at all lengthy.

The Kay Brown affidavit

[48.] Before disposing of this application, I find it necessary *ex abundanti cautela* to address the failure of the second respondent to participate in these proceedings. I am satisfied that every effort was made to inform, advise and secure the attendance of the second respondent and his participation herein. Mr. Farquharson, counsel for the second respondent on several occasions before the hearing of this application on the papers was given the opportunity to participate in and make submissions. Twice, the court adjourned the proceedings for that purpose. Severally, by telephone, email, and in person , Mr. Farquharson acknowledged dates, times and mode of hearing of these proceedings. (see the Kay Brown affidavit). As late as 4 November 2026, before the completion of penning of this decision, in open court before me, Mr. Farquharson acknowledged the pendency of this application *suus proprius eloquim.* Regrettably, he has failed and or declined to participate.

Disposition

[49.] In the premises, the applicant's application for injunctive relief is granted and it is ordered:

> (i) That Reginald Curry, the second respondent herein, any of his servants, agents, employees or entities or anyone in their control ("the Developer") is prohibited from undertaking any, or any further works or developments including building operations, construction, engineering, and or other operations in, on, over or under Gillam Bay and the foreshore, waters and seabed of and around Gillam Bay to a distance of three hundred feet from

the mean high water mark ("the area"). The Developer is prohibited from any or any further clearing, and the making of any or any further material change of use of the area (being a change in the use or character of the area), including by outdoor storage of mooring blocks or other material, components or accoutrements thereto related pending the determination of the substantive judicial review proceedings;

(ii) For the avoidance of doubt, the Developer is prohibited from undertaking any or any further excavation including the digging of pits and trenches, the construction of foundations for buildings, walls or other structures, the or any further excavation and or digging or boring of holes.

[50.] I will hear the parties further on the amount of the undertaking in damages, security for costs, and on the issue of costs.

Franklyn K M Williams MB KC

Justice

11 November 2026