EASTERN CARIBBEAN SUPREME COURT
GRENADA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV2021/0290 ELP (formerly CLAIM NO. GDAHCV2021/0126)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PURSUANT TO PART 56 OF THE CIVIL PROCEDURE RULES 2000 (AS AMENDED)

AND

IN THE MATTER OF THE PHYSICAL PLANNING AND DEVELOPMENT CONTROL ACT NO. 23 OF 2016 OF THE LAWS OF GRENADA

AND

IN THE MATTER OF THE DECISION OF THE PLANNING AND DEVELOPMENT AUTHORITY TO GRANT APPROVALS FOR DEVELOPMENTS AT LA SAGESSE IN THE PARISH OF ST. DAVID, LEVERA IN THE PARISH OF ST. PATRICK AND MT. HARTMAN IN THE PARISH OF ST. GEORGE

AND

IN THE MATTER OF THE PLANNING AND DEVELOPMENT AUTHORITY FAILING TO KEEP A PUBLICLY ACCESSIBLE REGISTER IN ACCORDANCE WITH THE PHYSICAL PLANNING AND DEVELOPMENT CONTROL ACT 2016

BETWEEN:

GRENADA LAND ACTORS INC.
CLAIMANT

AND

THE PLANNING AND DEVELOPMENT AUTHORITY
DEFENDANT

SIGNAPORE HENG SHENG GRENADA DEVELOPMENT PTE LTD
INTERESTED PARTY

HARTMAN GROUP LIMITED
INTERESTED PARTY

RANGE DEVELOPMENT (GRENADA) LTD
INTERESTED PARTY

Before:
The Hon. Justice Raulston L.A Glasgow High Court Judge

Appearances:
Leslie Thomas K.C and Rita Joseph – Olivetti for the Claimant

Sydney Bennett K.C, Aleya Williams and Caryn Adams for the Defendant
John Carrington K.C and Sheila Harris for the 1st Interested Party
Anand Ramlogan SC, Gina Dyer Munro and Daniella Williams – Mitchell for the 2nd Interested Party
Darshan Ramdhani K.C, Sabrita Khan – Ramdhani and Sydni Walker for the 3rd Interested Party

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2024: October 2nd & 3rd;
October 31st (Submissions);
December 6th, 9th, 11th ,12th (Submissions);
2025: January 23rd (Submissions);
2026: January 19th

JUDGMENT

INTRODUCTION

[1] The Planning and Development Authority of Grenada ("PADA") is the statutory body empowered through the Physical Planning and Development Control Act[1] (as amended)[2] ("the Act") to make decisions on environmental issues, including the grant of planning permission for the development of land in Grenada. Between October 2019 and June 2023, PADA approved 3 projects for development, the first situate at Mount Hartman in the parish of Saint George, the second situate at La Sagesse in the parish of St. David, and the third situate at Levera in the parish of St. Patrick (hereinafter collectively called "the 3 projects"). The 3 projects are all controlled by different incorporated entities, as part of Grenada's Citizenship by Investment[3] program.

[2] This matter has an extensive history before this court, with voluminous documents filed for the court's consideration. A chronology of the history of this matter is necessary to glean the reasons for the court's conclusions in this case.

[3] On 26th March 2021, the claimant, Grenada Land Actors, (hereinafter called "GLA") a corporate entity incorporated on 14th January 2021, applied for leave to commence judicial review of PADA's decision to grant planning approvals to the 3 projects. On 30th March 2021, leave was granted by this court, conditional

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[1] Act No. 23 of 2016 of the laws of Grenada.
[2] Act No. 23 of 2017 of the laws of Grenada
[3] Now rebranded as the "Investment Migration Agency" of Grenada.

on GLA filing its substantive claim within 14 days. GLA filed its substantive claim for judicial review on 14th April 2021, and sought several declarations, orders and costs as will be recounted below.

[4] Upon GLA's service of this claim on PADA, PADA applied on 13th May 2021 for GLA's claim to be struck out, alleging that GLA lacked the requisite standing to bring the claim. The corporate entities for 2 of the 3 projects, Hartman Group Limited (hereinafter called "Hartman"), which controls the Mount Hartman development, and Range Development (Grenada) Limited (hereinafter called "Range"), which controls the La Sagesse development, filed written applications to be added as parties to the claim. Singapore Heng Sheng (Grenada) Development Pte Ltd (hereinafter called "Heng Sheng"), which controls the Levera Development, applied to be added as an interested party. GLA vigorously opposed these applications.

[5] After considering the submissions from the parties, this court[4] added Range, Hartman and Heng Sheng as interested parties to GLA's claim, and ordered GLA to file an amended claim to reflect the addition of the interested parties. PADA's strike out application was adjourned. GLA filed its amended claim on 15th September 2021[5]. Hartman and Range thereafter also filed applications on 30th September 2021 and 8th October 2021 respectively to strike out GLA's claim for lack of standing. These applications led to the delivery of the 2nd decision of this court[6], where the applications to strike out the claim were refused.

[6] That decision was subsequently appealed[7]. The Court of Appeal concurred with this court's ruling, dismissed the appeal, and remitted the matter to this court for further hearing.

[7] On 10th May 2023, GLA applied for directions for trial, and on 15th June 2023, Range made another application for GLA's claim to be struck out, alleging that

[4] See GDAHCV2021/0126 delivered on 10th September 2021.
[5] Migrated on to the E – Litigation portal as Claim No. GDAHCV2021/0290 as ordered on 24th June 2021.
[6] See GDAHCV2021/0290 delivered on 29th March 2022.
[7] See consolidated appeals GDAHCVAP2022/0008, GDAHCVAP2022/0009 & GDAHCVAP2022/0010 delivered on 8th March 2023.

GLA had failed to comply with court orders. On 18th July 2023, PADA applied for an extension of time to file evidence. GLA strenuously opposed both applications.

[8] The 3 applications came on for hearing on 18th July 2023, where case management directions were given. Range's application to strike out was dismissed and trial dates were set. On 2nd November 2023, GLA applied for permission to file additional evidence, and on 10th November 2023, made an application to further amend their claim, concerning the approval granted to the Levera Development. GLA's applications were opposed by Heng Sheng, and at the hearing on 11th December 2023, GLA's applications for extension of time and further amendment of the claim were granted. PADA and the Interested Parties were also permitted time to reply to GLA's further amended claim.

[9] Further applications were made by both GLA, PADA and the Interested Parties, leading to a hearing on 18th March 2024, where new trial dates of 2nd and 3rd October 2024 were set. Other inconsequential applications were made, and the trial of this matter was held on 2nd and 3rd October 2024, where counsel for the parties valiantly argued their respective positions. After the trial, the parties were ordered to file written closing submissions. The matter now stands ripe for consideration of GLA's claim and the responses/defences of PADA and the Interested Parties.

GLA'S CLAIM

[10] In GLA's Re – Amended Fixed Date Claim filed on 14th December 2023, GLA sought costs & the following relief:

<u>The Public Register & Regulations under the Act</u>

1) A declaration that PADA has failed in its public duty to keep a publicly accessible register in accordance with section 69 of the Act;
2) An order of mandamus directing PADA to update the existing public register in respect of the planning applications for the La Sagesse development, the Levera

development and the Mt. Hartman development and thereafter to maintain the said register in accordance with section 69 of the Act;

3) An order of mandamus directing PADA in respect of the La Sagesse development, the Levera development and the Mt. Hartman development to produce to GLA forthwith upon payment of the prescribed fees, copies of the planning applications, all plans, information and other material as defined by s.69 of the Act which is to include, amongst others, the following:
    a. The actual applications made for planning permission including all supporting documents;
    b. The plans for all projects;
    c. Any amendments or revisions to the applications;
    d. All related applications;
    e. Environmental Impact Assessments and supplemental Environmental Impact Assessments; and
    f. All notices issued.

4) A declaration that the lack of Regulations governing the EIA process as contemplated by s.22(4) of the Act, seriously and significantly hampers PADA in the discharge of its public duties under the Act and consequently undermines Parliament's intention and the legitimate public expectations to be consulted on Third Schedule Projects as embodied by the Act.

La Sagesse Development

1) A declaration that the decision made on 29th January 2020 to grant planning permission for the La Sagesse development in the parish of St. David in Grenada was irrational and/or unreasonable and/or was arrived at in a procedurally improper manner and/or contrary to the legitimate expectations of the GLA and the public that they would be consulted prior to the grant of approval and was not in accordance with the Act and is null and void and of no effect.
2) A declaration that PADA failed in its public duty imposed by the Act to protect the natural and cultural heritage of Grenada at La Sagesse when it allowed the developer of the La Sagesse development to interfere with/or impede/or hamper the public right of access to the beach, to destroy the vegetation fringing the

beach and the salt pond, to partially backfill the salt pond thus destroying the habitat of birds and other wildlife and to carry out development on the low-lying area in the proximity of the salt pond.

3) An order of certiorari to remove into this Honourable Court and quash the decision made by PADA to grant permission for the development at La Sagesse in the parish of St. David in Grenada.
4) An order of mandamus directing PADA to [1] reconsider the application for planning permission for the La Sagesse development in accordance with the Act and in particular consult with the Natural and Cultural Heritage Advisory Committee, [2] ensure that the developer conducts or commissions a proper Environmental Impact Assessment (hereinafter called "EIA") process in accordance with the law and in particular addresses the need for marine surveys and all other shortcomings highlighted in the La Sagesse Report;[3] ensure that the developer conducts prior meaningful and transparent stakeholder consultations with the community and experts; [4] ensure that the developer repairs forthwith the damage done to the salt pond and the wetland; [5] ensures that the developer puts measures in place to ensure the public access to the beaches and [6] enforce the recommendations made by the EIA for the La Sagesse development.

Levera Development

1) A declaration that the decision to grant planning permission for the temporary workers' housing in the parish of St. Patrick in Grenada on 23rd June 2020 was *ultra vires* and / or illegal in that the decision was made prior to the completion of the EIA being carried out by Niles and Associates and in contravention of s.22 (3) of the Act, which prohibits the grant of permission to develop land 'unless it has first taken the report on the EIA into account'.
2) A declaration that the decision to grant planning permission for the golf course at Levera on 25th May 2022 was irrational in that the EIA by Niles and Associates, dated March 2021 was so inadequate that no reasonable authority could have relied upon it to grant permission.
3) A declaration that the decision to grant planning permission for the tourism resort at Levera on 15th June 2023 failed to take into account relevant considerations, namely the detailed review of the March 2021 EIA submitted by

GLA in February 2023 and the criticisms made therein, and failed to engage with those criticisms and give adequate reasons for rejecting them, further or alternatively, that the decision was irrational because the March 2021 EIA was so inadequate that no reasonable authority could have relied upon it to grant permission;

4) An order of certiorari to remove into this Honourable Court and quash (1) the decision made by PADA dated 23rd June 2020 to grant permission for the temporary workers' housing at Levera in the parish of Saint Patrick; (2) the decision made by PADA dated 25th May 2022 to grant permission for the golf course at Levera; and (3) the decision made by PADA dated 15th June 2023 to grant permission for the tourist resort at Levera;
5) Alternatively, a declaration that the decisions of 23rd June 2020, 25th May 2022 and 15th June 2023 by PADA to grant planning permission for the Levera development in the parish of Saint Patrick in Grenada were irrational and unlawful, and an order of certiorari to remove into this Honourable Court and quash those decisions;
6) An order of mandamus directing PADA to reconsider the application for planning permission for the Levera development in the parish of Saint Patrick in Grenada in accordance with the Act and in particular [1] consult with the Natural and Cultural Heritage Advisory Committee; [2] ensure that the developer conducts or commissions a proper EIA process in accordance with the law and in particular addresses the need for marine surveys and all recommendations highlighted in the Levera Report; [3]ensure that the developer conducts prior meaningful and transparent stakeholder consultations with the community and experts; [4] ensure that the developer prevents damage to the Levera pond and the surrounding wetlands; [5] ensure that the developer puts measures in place to maintain the public access to the beaches; [6] ensure that the developer puts measures in place to limit negative effects of the development on the Ramsar site and the surrounding environment, the turtle nesting habitats and the beaches and [7]enforce the recommendations made by the EIA for the Levera development.

Mt. Hartman Development

1) A declaration that the decision made in October 2019 by the Defendant to grant planning permission for the Mt. Hartman development in the parish of St. George in Grenada was *ultra vires* and/or illegal in that the decision was made prior to the completion of the updated EIA being carried out by Dr. Valma Jessamy of JECO Caribbean which is in contravention of s.22(3) of the Act, which prohibits the grant of permission to develop land 'unless it has first taken the report on the EIA into account.
2) An order of certiorari to remove into this Honourable Court and quash the decision made by the Defendant to grant planning permission for the Mt. Hartman development in the parish of St. George in Grenada.
3) Alternatively, a declaration that the decision made in October 2019 by the Defendant to grant planning permission for the Mt. Hartman development in the parish of St. George in Grenada, was irrational and/or unreasonable and/or unlawful in that the Defendant did not take into account all relevant matters as required by s.3 and s.22 (3) of the Act and an order of certiorari to remove into this Honourable Court and quash the decision.
4) An order of mandamus directing the Defendant to reconsider the application for planning permission for the Mt. Hartman development in the parish of St. George in Grenada in accordance with the Act , and in particular [1] consult with the Natural and Cultural Heritage Advisory Committee; [2] ensure that the developer conducts or commissions a proper Environmental Impact Assessment (EIA) process in accordance with the law and in particular addresses the need for marine surveys; surveys of wetland habitat, including mangrove species; surveys of the Grenada Dove population and the development of mitigation measures to protect the species [3] ensure that the developer conducts prior meaningful and transparent stakeholder consultations with the community and experts, particularly experts on the Grenada Dove; [4] ensure that the developer puts measures in place to maintain the public access to the beaches; [5] ensure that the developer puts measures in place to limit negative effects of the development on: the Grenada Dove Sanctuary and habitat; the Mt. Hartman National Park, including its natural and cultural assets and archaeological sites ; the Woburn / Clarkes Court Bay Marine Protected

Area (MPA) and [6] enforce the recommendations made by the EIA for the Mt. Hartman development.

GLA'S EVIDENCE

[11] GLA filed substantial evidence in support of their contentions. 2 Affidavits were filed by Dr. Jody Daniel, 5 by Andre Joseph – Witzig, and 1 each from Sandra Ferguson and Reginald Joseph. Their evidence is as summarized below.

Dr. Jody Daniel's Evidence

[12] Dr. Daniel recounted that she is a director of GLA, and a community and wetland ecologist, with postgraduate degrees in Marine and Wildlife Biology, Natural Resource Management and Ecology and Environmental Biology. She also recounted that she is an Executive Director of GAEA, an environmental action and research organization. She recalled that prior to GLA's incorporation, GLA conducted its affairs informally and the group comprised of professionals, private land users and concerned citizens interested in sustainable land management and governance in Grenada.

[13] She asserted that these professionals all had expertise in the areas concerning the application, including the La Sagesse coastline. She recalled that in August 2019, she became aware that mangroves around the La Sagesse salt pond were removed due to a pending development. Dr. Daniel recounted that she contacted Range through their website, but got no substantive response. In March 2020, Dr. Daniel claimed that she visited PADA's office requesting more information on the La Sagesse development, and she then held an impromptu meeting with PADA's CEO – Mr. Frederick. Dr. Daniel posits that she was allowed to view Range's architectural plans and she raised concerns about the project to Mr. Frederick.

[14] Dr. Daniel recalled that Mr. Frederick directed her to raise her concerns with Range, but her attempts to contact Range were unsuccessful. On 27th March 2020, GAEA communicated their concerns about the project with Range, including the need for a substantive EIA, and on 29th March 2020, following a

meeting with Range and GAEA, GAEA was presented with confidential information and documents regarding the La Sagesse development. Dr. Daniel indicated that GAEA reviewed these documents and she co – authored a report with Mr. Joseph – Witzig, which was shared with Range. Dr. Daniel referenced that this report concluded that Range's development was based on a deficient EIA.

[15] On 12th August 2020, Dr. Daniel recalled that she and other GLA and GAEA members attended a town hall meeting at La Sagesse with Range representatives and other members of the public. At this meeting, concerns were raised by the public about the lack of access to information on the project, the need to maintain public access to the beach and destruction of the mangroves. On 14th August 2020, she recounted that GAEA's report was published online with Range's consent.

[16] On 11th September 2020, GLA requested information and documents concerning the La Sagesse development and 2 other developments from PADA. Dr. Daniel lamented that PADA responded by letter dated 15th September 2020 indicating that GLA's request could not be fulfilled, and although further correspondence to PADA followed, the information requested was never provided.

[17] Dr. Daniel further recounted that between July and September 2020, GLA became aware of 2 billion-dollar tourism projects – the Levera development and the Mt. Hartman development. Dr. Daniel deposed that GLA consulted its members, and from October 2020 onwards considered its legal options, which were hamstringed by the voluntary nature of the group and the COVID pandemic. In November 2020, GLA decided to pursue legal action, and launched a campaign to raise funds to secure legal representation.

[18] Legal representation was eventually found, and on 12th December 2020, GLA's attorney formally requested that PADA produce the documents relating to the developments which ought to be on the public register. Dr. Daniel stated that PADA, through Mr. Frederick, responded by letter dated 15th December 2020,

advising that PADA had forwarded GLA's correspondence to the Ministry of Legal Affairs for review and advice. GLA later received responses from the Attorney General's Chambers by letters of 4th and 25th January 2021. Dr. Daniel lamented that there had been no public consultations prior to the grant of planning approval for the developments, and this curtailed GLA's personal and collective action and reduced their ability to make swift decisions. In early February 2021, she recalled that GLA was constrained to seek another attorney, and could not secure representation until 6th March 2021 to file the instant matter.

[19] Dr. Daniel vacated her directorial role in GLA on 23rd April 2023, but remained a member and has been involved in research and studies in both the Levera and Mt. Hartman development. When the matter was filed in March 2021, Dr. Daniel recalled that there was limited public disclosure on the developments, which restricted the scope of information available to GLA. This, she claimed, forced GLA to draw inferences from the limited information available on the public register and the public meetings convened by EIA consultants, GIS reports, the websites for the 3 developments, site visits and aerial photos. Dr. Daniel referenced GLA's report on the Levera development, where GLA reviewed the EIA conducted by Niles & Associates and highlighted the inadequacy of that EIA on issues such as the RAMSAR buffer at the Levera site, and the salt pond.

<u>Andre Joseph – Witzig's Evidence</u>

[20] Mr. Joseph – Witzig recalled that he is a member of GLA and GAEA, and that he is an environmental consultant with post graduate degrees in Coastal Science, Policy Science and Marine Biology. He has worked as a Senior Environmental Officer with the Government of Grenada and assisted with the development of Grenada's coastal zone policy and legislation. Mr. Joseph-Witzig indicated his familiarity with the La Sagesse site, which he frequented since he was a child. In December 2020 on a visit to La Sagesse, Mr. Joseph - Witzig noticed that land clearing was taking place.

[21] On 21st February 2021, he visited the development and observed that the mangrove vegetation had been cut down, and the pond appeared to be raised.

He recounted that the development appeared to be taking place closer to the shoreline than the 50m coastal setback he is familiar with, and public access to the beach appeared to be restricted. Mr. Joseph – Witzig visited the site again on 14th March 2021 and observed a significant area at the same location had been excavated, the vegetation deforested and an entrance had been created. He recalled seeing heavy machinery on site, which caused him grave concern.

[22] Mr. Joseph – Witzig indicated that, in August 2020, he also became aware of land development at Levera. GLA and its members became very concerned because it appeared that aspects of the development were encroaching on the boundaries of the RAMSAR site and that large scale infrastructure would be placed in very close proximity to the wetlands and turtle nesting beach. On 3rd September 2020, Mr. Joseph-Witzig indicated that he and several other members of GLA attended a meeting at the Levera site hosted by Mr. Frederick, which was attended by members of the public, Mr. Niles of Niles & Associates – the firm engaged in conducting Levera's EIA, a representative of the developer, the parliamentary representative for the area and members of the media.

[23] On 7th September 2020, a newsletter was published by the Government Information Services which informed on the size of the Levera development. This caused GAEA to correspond with Niles & Associates to request and provide information on the EIA, as GAEA had previously conducted research at Levera. He recalled that GAEA collaborated with other bodies to review Levera's development plans and the resulting concerns and recommendations were sent to Mr. Niles on 2nd October 2020 in a report co-authored by Mr. Joseph – Witzig and Dr. Daniel. He lamented that GAEA never received any feedback from Mr. Niles, and that he is not aware of any other consultation being conducted.

[24] As it relates to the Hartman development, Mr. Joseph – Witzig indicated that he utilized the road which goes through Mt. Hartman to access Hog Island, and recalled that in August 2020, he became aware of reports of construction of another large-scale tourism development at Mt. Hartman. He visited the site on 23rd August 2020, and noticed mangroves and roads were being cleared. He reported his findings to the members of GLA and a government press release

on 31st August 2020 confirmed that the developer of the Mt. Hartman project had changed. Between September and November 2020, Mr. Joseph – Witzig and other members of GLA and GAEA held meetings with Hartman personnel and other stakeholders to discuss their concerns.

[25] He recounted that during these meetings, Mr. Frederick informed them that the Hartman development passed through all stages of PADA approval, and that the development had received planning permission on 4th September 2015. Mr. Joseph – Witzig indicated that no detailed plans were shown, the full scope of the project was not discussed, and no public consultation was held prior to the grant of approval by PADA to Hartman. On 11th September 2020, he recalled that GLA contacted PADA seeking information on the 3 developments.

[26] Due to growing public concern about the 3 developments, GLA started an online public petition which ran from 29th August to 8th October 2020 on Change.org. On 14th October 2020, Mr. Joseph – Witzig visited PADA's offices to inspect the contents of the public register, but it only contained scant information about the Levera and La Sagesse projects, and there was no information on the Mt. Hartman project.

[27] On 6th April 2021, Mr. Joseph – Witzig and other GLA members attended consultations about the Levera development. The meeting was chaired by Mr. Niles, who was contracted to conduct the EIA for Levera. He recalled that Mr. Niles spoke about the reduction in size of the project but made no mention of GAEA's report. Mr. Joseph – Witzig recalled that there was also no mention of marine studies being conducted to inform the EIA, and while concerns were raised about the project, these concerns fell on deaf ears. Mr. Joseph – Witzig indicated that he travelled to the development several times during September 2020 and March 2021 to watch the development and take aerial and drone photos of what was occurring.

[28] Since the commencement of these proceedings, Mr. Joseph – Witzig recalled that PADA continued to allow development of the 3 projects without proper regard to the law, resulting in significant damage to the environment. He stated

that GLA took issue with Mr. Frederick's statement that an EIA was not required in every circumstance or that PADA had the power to waive that requirement. Even if that power existed, he argued that PADA exercised its decisions irrationally and unlawfully. Mr. Joseph – Witzig pointed to several deviations from the approval given by PADA to the developers, and lamented that PADA failed to impose any penalties on the developers for these breaches.

[29] Mr. Joseph – Witzig also complained that Heng Sheng's approval in principle was only discovered during disclosure in these proceedings, as it was not listed in PADA's public register as required by law. He also observed that Heng Sheng's EIA was only completed after the final approvals for the project were granted to Heng Sheng, in breach of the law. He also argued that Heng Sheng's EIA was wholly inefficient and ought not to have been relied on by PADA to grant planning approval. He equally made the same argument about the inadequacy of the La Sagesse and Mt. Hartman EIA's, highlighting in detail, the inefficiencies in each document with reference to GAEA'S/GLA's reports.

[30] He recalled that on 10th February 2023, GLA produced a document entitled '*Review of the EIA for Grenada National Resort'*, which was sent to PADA, highlighting the inadequacies in the Levera EIA. Mr. Joseph – Witzig indicated that PADA still proceeded to grant final approval for the Levera development on 15th June 2023, and no reasons were given by PADA for granting final approval.

[31] Mr. Joseph – Witzig argued that none of the approvals complied with the law, and highlighted that none of the interested parties, outside of Range, disclosed all relevant documents to the court, such as its title documents, during the pendency of the claim. He also asserted that GLA conducted in-depth reviews of the documents relied on, including the EIAs, and found them to be wholly inadequate, rendering any permission grounded on the EIAs irrational, unreasonable and unlawful.

[32] Mr. Joseph – Witzig further indicated that PADA's Mr. Frederick made several references to the EIA Committee, but this committee appeared not to be established in strict accordance with the Act, and was not active at the time

when the developments were approved. Mr. Joseph – Witzig also pointed out that there was no proper documentary evidence supporting the approvals before the court, as PADA's disclosures were void of any agendas, minutes or resolutions about its decisions to show what PADA considered prior to granting approval and its reasons for doing so.

<u>Sandra Ferguson's Evidence</u>

[33] Ms. Ferguson is a development worker. She stated that she wrote to the head of PADA on 23rd November 2019 about 2 coastal tourism projects in True Blue and Grand Anse. In that letter, Ms. Ferguson recalled that she raised several concerns and requested information on when public consultations as part of the EIAs had been conducted. She also requested sight of the EIAs and contended that public consultations were integral to the EIA process.

[34] The letter was copied to the Chairman and other members of PADA, and to the Director of Environment, Ministry of Climate Resilience. This letter received no response. Ms. Ferguson then wrote to the Chairman of PADA, Mr. Frederick on 27th December 2019, renewing her request for sight of the reports on the EIAs for the 2 developments. This letter also received no response.

[35] Ms. Ferguson then wrote to the new Chairman of PADA, enclosing copies of her unanswered letters. She recalled that Mr. Frederick responded by letter of 27th January 2020 giving basic information about the developments, but did not address the request for EIAs or public consultation. Mr. Frederick also advised her that the necessary due diligence was done in the review process prior to the approval of the applications. This response caused Ms. Ferguson by letter of 27th February 2020, to renew her request for access to the EIA reports for the developments.

[36] Ms. Ferguson also deposed that on 18th March 2020, she visited PADA's Physical Planning Unit's office to request access to the EIA reports. She recalled that Mr. Frederick gave her a short meeting, and informed her that he did not have the authority to give her access to the EIA reports and asked her to point out the section in the Act which permitted her such access. Ms. Ferguson further

deposed that she was taken aback by his response, as she expected that he would be acquainted with the Act and would advise her of the section which denied the public access to the EIA reports. Ms. Ferguson pleads that the EIA reports are public documents and to date, she had not been afforded the sight of several EIA reports which she had requested.

Reginald Joseph's Evidence

[37] Mr. Joseph is a freelance photographer and videographer, who worked with various media entities in Grenada. He deposed that he was instructed by GAEA to take pictures to document the La Sagesse coastline in 2019. He was paid by GAEA for his work. He exhibited pictures which he indicated were taken of the La Sagesse pond by a drone before development started, and pictures after the development started on 29th July 2020. He deposed that GLA requested that he take pictures to document the changes at Mt. Hartman, and exhibited pictures of these aerial photographs, which he explained were taken over several months in 2020 and 2021.

PADA's RESPONSE

[38] PADA's evidence was provided by Mr. Carlton Frederick, who filed 2 affidavits, and Ms. Nyasha Moore – Regis and Mr. Anthony Jeremiah, who each filed 1 affidavit. Witness summaries were also filed on behalf of Ms. Aria St. Louis and Mr. Trevor Thompson. PADA's evidence is as summarized below.

Carlton Frederick's Evidence

[39] Mr. Frederick is retired. He served as the former acting Chief Executive Officer of PADA from 8th January 2020 to July 2022. Prior to his appointment as CEO, he served as Chairman of PADA's Board of Directors in 2019. He detailed the process for making an application to develop land, the supporting documentation required under the Act, and outlined the difference between approval in principle and final approval for development purposes. Mr. Frederick indicated that approval in principle does not equate to permission to commence development and that development can only occur after approval under the Act.

[40] Mr. Frederick recalled that during his tenure, when an application for approval was received, PADA would conduct site visits through site inspectors who prepared reports. These applications with supporting documents, including EIAs, would be sent to several governmental agencies for their review and comment. Mr. Frederick stated that an EIA may be required if the proposed development could significantly affect the environment.

[41] While the Act provides for regulations to be made for the appointment of an EIA Committee, Mr. Frederick points out that no such regulations exist. Notwithstanding the lack of regulations, an EIA Committee was formed with members including PADA's Chief Planning Officer, the Senior Health Officer for the Ministry of Health, the Chief Technical Officer from the Ministry of Works & Infrastructure, the Senior Environmental Officer from the Department of Environment, the CEO of Lands, representatives from the Forestry and Fisheries Division and Mr. Frederick as Chairman. When an EIA is submitted to PADA, Mr. Frederick recounted that the EIA Committee would consider the draft.

[42] He recounted that the EIA Committee held several meetings with persons connected to or affected by the developments and conducted several site visits and consultations before decisions regarding applications were made by PADA. In making decisions, Mr. Frederick confirmed that the Committee first considered the EIAs submitted, and also, in this case, considered GLA's reports and other public commentary. He discussed that all concerns were submitted to developers for relevant plan adjustments, and once these conditions were met, approval was given.

[43] Mr. Frederick indicated that he consulted the EIA Committee on the 3 developments by sending letters to the various public agencies in March 2020. Mr. Frederick recalled that these recommendations were then submitted to PADA's Board of Directors, who made the final decision on whether an application was conditionally or wholly granted, refused, or whether further information was needed to make a decision. He stated that PADA also conducted periodical site visits to keep abreast of the developments, and the granting of approval was not the end of communications with developers.

[44] On the issue of the public register, Mr. Frederick indicated that the register is located at PADA's office. He acknowledged that PADA received a letter on 14th September 2020 from GLA, requesting that copies of the notices for the grant of permission for the 3 developments be provided by 25th September 2020 – a mere 11 days. Mr. Frederick recalled that he informed GLA that the Unit was transitioning, and that it would be difficult to accommodate the request by the deadline. On 15th December 2020, Mr. Frederick wrote to GLA, indicating that their communication was passed to PADA's legal representatives for legal advice.

[45] Following this legal advice, Mr. Frederick advised GLA that the Act permitted access to the documents following payment of the prescribed fees. Mr. Frederick further informed GLA that members of the public were allowed to view the register, but that PADA could not facilitate GLA's demands for large volumes and copies of the documents in the time frame given. Mr. Frederick also admitted that the register was not always updated as mandated by the Act, due to severe staffing deficiencies within PADA.

[46] On the issue of public consultations, Mr. Frederick emphasized that PADA is not mandated by the Act to conduct public consultations at any stage of the development process. He however acknowledged that while public consultations were the preferred position, it was incumbent on the consultant conducting the EIA to do so. Mr. Frederick confirmed that the Interested Parties all held public consultations – Levera on 30th July 2020 and 6th April 2021, Hartman as early as 2011 and Range in August 2020.

[47] Mr. Frederick recalled that Levera applied for approval in principle, as the project was to be conducted in 3 phases – phase 1 (temporary staffing dorms), phase 2 (hotel rooms), and phase 3 (villas). He states that this approval in principle, further to the application dated 2nd June 2020, was conditionally granted and partially based on EIAs previously produced for large-scale developments in the same area in 2007 and 2015. He further recounted that these EIAs were used to obtain a general understanding of the whole development and its implications,

but one of the conditions on granting the approval in principle required Levera to present an EIA before final approval was considered.

[48] Mr. Frederick recounted that a site inspection was conducted on 4th June 2020, and it was observed that works were done on the site arising from previous planning approval from a previous developer, but this work had minimal impact on the environment. He recalled that this previous developer commenced development but had not completed the permitted development before selling the property to Heng Sheng. Mr. Frederick deposed that PADA was satisfied that there were no serious environmental concerns, and that the EIA done for the previous developer was satisfactory and thus obviated the need for a new EIA.

[49] Mr. Frederick further deposed that by letter dated 30th June 2020, PADA restricted the clearing of the site to the already completed area, and required that further permissions be sought for any further land clearing. Mr. Frederick also recounted that permission was sought to construct a jetty so that material could be brought to the site in a more efficient manner. A revised EIA was submitted by Heng Sheng dated 20th January 2021, which took the jetty's impact into account.

[50] During Mr. Frederick's tenure with PADA, he liaised with Heng Sheng concerning the need for updated plans, EIAs and other general supporting documents before final approval could be granted, which Heng Sheng submitted. During Mr. Frederick's tenure with PADA, he recalled that PADA never saw any interference with the RAMSAR site due to the Levera development.

[51] Mr. Frederick recalled that Heng Sheng sought to extend the golf course for which approval was given to the former developer. PADA requested that Heng Sheng resubmit the application, which was done. PADA reviewed the application as a separate development and used the EIA conducted by Mr. Niles for this purpose. After review and careful consideration, Mr. Frederick indicated that the proposed golf course was approved.

[52] The Hartman project was approved prior to Mr. Frederick's tenure with PADA, as PADA's records showed that the application for approval in principle and supporting documents were submitted by Grenada Resort Complex Limited and approved on 2nd September 2015 to develop 257 acres of land for a tourism resort. Mr. Frederick deposed that these approvals occurred before the Act commenced and the establishment of the EIA Committee.

[53] Mr. Frederick recalled that their records reflected further applications being made between 30th November 2015 and October 2019, based on an EIA submitted in 2015. Mr. Frederick recounted that PADA liaised with Hartman about concerns about the project, including requests for updated EIAs and master plans. By letter dated 20th December 2020, Mr. Frederick wrote to Hartman, granting conditional approval of the modified master plan on conditions of, among other things, Hartman presenting an updated EIA and a final application for development. Mr. Frederick indicated that Hartman presented an updated EIA to PADA in January 2021, and received approval in principle for additional development to commence development of a university campus and a hotel resort. He deposed that the updated EIA aided PADA with its assessment.

[54] Mr. Frederick recalled that PADA's records showed that by letter dated 6th February 2019, Range submitted an application for approval in principle of a resort, including villas and individual accommodation units. Range then applied for permission to develop land in the La Sagesse area for the purpose of constructing a 78-room resort and provided extensive plans, drawings and other supporting documents. The clearing of land for construction was considered under Phase 1, and an EIA was submitted to PADA on 3rd July 2019.

[55] Mr. Frederick indicated that this application was conditionally approved on 29th January 2020, with some conditions being public consultation, reforestation efforts, and sediment preservation measures. Mr. Frederick deposed that in 2020, PADA was made aware that there had been a breach of the approval conditions. Members of the EIA Committee conducted site visits and met with the developers to discuss mitigation measures to address the breaches. He also

deposed that Range sought further approval for the enhancement of an existing pond/lagoon, which was also conditionally granted, and PADA requested that Range install flooring barriers to regulate turbidity in the lagoon and employ other mitigation measures.

[56] PADA continued to monitor the implementation of the mitigation measures with Range, and Mr. Frederick reported that all measures were properly implemented thereafter. During Mr. Frederick's tenure as CEO of PADA, several meetings were held with Range's representatives to monitor the development's progress. Range later applied for permission to clear land for phase 2 of its development. Mr. Frederick confirmed that PADA indicated by letter of 19th November 2020, that this request was deferred, subject to a site visit and inspection.

[57] Mr. Frederick concluded that PADA acted in compliance with and discharge of its duties under law, and nothing in the Act required, as a precondition to final approval, that PADA should first satisfy itself that a developer had title to the land, if a prospective purchaser had the owner's approval to the proposed development. Mr. Frederick also found that the EIAs as submitted to be adequate.

Anthony Jeremiah's Evidence

[58] Mr. Jeremiah served as the acting Chief Forestry Officer in the Ministry of Agricultural Lands and Forestry, and as a member of the EIA Committee for 1 year. He recalled that after EIAs were submitted to PADA, the EIA Committee usually got involved. At times though, he recalled, the Committee sometimes received requests for consultations prior to the submissions of EIAs, where feedback was requested on areas of concern to be addressed. Mr. Jeremiah indicated that PADA had guidelines for EIA preparation, which were sent to developers. His role was review of the EIA for forestry implications.

[59] Mr. Jeremiah recalled several interactions with consultants and developers for each project, and deposed that several EIAs were prepared for the Levera project over the years. He recalled that the consultant working on the Levera EIA wanted to know about the RAMSAR designation. Equally, when he attended

public consultations on this issue in July 2020, feedback was provided to community stakeholders. Mr. Jeremiah recollected strong racist comments being expressed about the developers.

[60] Mr. Jeremiah deposed that the Levera developers did major revisions to their master plan by reducing the size of the development from 375 acres to 256 acres and the number of proposed villas by half. In his view, an adequate buffer zone for the protection of the RAMSAR site was established. He recounted that recommendations were made regarding lighting, guest control, visitation, access and furniture to mitigate the impacts on the nesting turtles and the environment.

[61] Mr. Jeremiah recalled that the Hartman area contained a National Park and Dove Sanctuary, which were established protected areas, and the development was a continuation of a prior development plan. In 2015, an application for planning permission was made and at that time, an EIA was submitted for review and concerns were raised. Site visits were conducted by Mr. Jeremiah and other consultants to observe whether the dove was present in the development area, and strong recommendations on the EIA were made.

[62] At the time of these recommendations, Mr. Jeremiah confirmed that they had strong commitment from the developers, but the project did not materialize. He deposed that they are currently engaging with the new developers to ensure that the earlier recommendations made are put in place. In November 2020, Mr. Jeremiah indicated that the developers submitted a new development plan, which appeared to incorporate more conservation measures and provided for less development, which eased up the environmental concerns.

[63] From Mr. Jeremiah's viewpoint, the current activities were not impacting the dove sanctuary, and while there was some impact with the wetlands, it was in line with the approved updated development plan. He acknowledged that some mangroves were removed by Hartman and at that time, the final application and EIA had not been submitted, so the clearing should not have occurred. Mr. Jeremiah further deposed that when reviewing EIAs, a balance was always

struck between monitoring the effects of development on the overall environment, and what could be removed or reintroduced in a sustainable manner according to the circumstances.

[64] On the La Sagesse development, Mr. Jeremiah recounted that planning permission was sought in September 2019 and an EIA submitted. On 12th March 2020, he submitted his comments on the EIA, highlighting several issues and making recommendations that further in-depth studies be undertaken on mangrove preservation. Mr. Jeremiah found that his concerns were not adequately addressed, as the developer cleared the coastal wetlands in a way that they could not be replanted without permission and in breach of their own EIA.

[65] Mr. Jeremiah pointed out that the EIA specifically provided for conservation measures for vegetation and trees. He deposed that PADA took immediate action to ensure that future development would include conservation of trees on a phased basis, and work was done such as identifying and tagging trees to be conserved. Mr. Jeremiah noted that the developer's plans were complex and comprehensive, and the EIA Committee also recommended increased oversight on the project until another EIA was submitted. A subsequent EIA was submitted and in Mr. Jeremiah's review, he felt that it was well researched and contained a succinct restoration plan for enhanced bird life. He therefore felt comfortable that the area would be restored.

<u>Nyasha Moore – Regis' Evidence</u>

[66] Ms. Moore – Regis served as PADA's Acting Chief Executive Officer. She deposed that the PADA may require that an EIA be carried out for any application for permission to develop land, if the proposed development could significantly affect the environment. The EIA guided PADA in deciding whether to grant planning permission for a project which is likely to have significant effect on the environment. She recalled that it is PADA's practice once an EIA is submitted, to discuss, carefully consider and deliberate over it with the EIA Committee before planning permission is granted.

[67] Ms. Moore – Regis found that the Levera EIA conducted by Niles & Associates dated 4th March 2021 was satisfactorily and thoroughly conducted and that it caused PADA to carefully consider whether to grant permission for the development and on what terms. She found that the EIA substantially met the requirements of alerting the EIA Committee about the effect of the construction and operation on the environment and the development's consequences to the community.

[68] Ms. Moore – Regis rejects GLA's assertions that the decision to grant planning permission for the Levera development was irrational, or that the EIA was so inadequate that it could not be relied on. She also averred that PADA considered GLA's Levera report prior to granting Levera's final approval on 15th June 2023. Ms. Moore – Regis noted that the legislative framework did not mandate that PADA give reasons to members of the public for not implementing their suggestions or addressing their concerns. Ms. Moore – Regis concluded that PADA did not act unlawfully or in breach of any of its statutory or regulatory obligations in granting permission for any of the developments.

<u>Aria St. Louis' Witness Summary</u>

[69] Ms. St. Louis served as the Head of the Environmental Division at the Ministry of Tourism, Civil Aviation, Climate Resilience and the Environment. She is an Environmental Specialist and has been employed with the Environmental Division for more than 10 years. When Hartman's application for planning permission and EIAs were first submitted in 2015, she did not have sight of them, as she was on maternity leave. Thus, her first interaction with the project was after the renewed application for planning permission had been made and granted.

[70] The first meeting Ms. St. Louis attended as a member of PADA's Board was in January 2020. As the Hartman project was viewed as a revised and not new project, the Board was of the view that a revised EIA was required. By letter dated 24th November 2020, she recounted that the developers of the project sought permission to modify the master plan for the project. PADA's Board

considered this proposal at its meeting of 22nd December 2020 and approved the modification to the master plan on 28th December 2020.

[71] The developers were still required to submit an EIA, which had to be approved before any works could occur on the project. She noted that a consultant was retained and stakeholder consultations were undertaken. Ms. St. Louis pointed out that normally, when an EIA is submitted for a project, it is reviewed by the EIA Committee. The EIA Committee then submits a report to PADA's Board for consideration. When PADA's Board received the report, she confirmed that it is considered and a determination is made on whether to grant approval with conditions.

[72] Ms. St. Louis was not present at PADA's Board meeting of December 2019 when approval in principle was granted for the Levera site. One of the main concerns for this project was its proximity to the Ramsar site, as the Levera project had a long history, dating back to 2007. PADA made a visit to the site on 4th June 2020, and 3 prior environmental studies were considered when reviewing this application. She recalled that on 19th November 2020, the developers sought a 6-month extension for the submission of their final application for planning permission, which was granted on 27th November 2020.

[73] On 28th December 2020, Ms. St. Louis indicated that the developers submitted a revision to the master plan, reducing the building site from 375 acres to 256 acres to provide a buffer zone between the development and the RAMSAR site. There was also a proposed 50 percent reduction in the number of villas along with the relocation of the proposed golf course. Ms. St. Louis confirmed that a revised approval in principle was granted on 28th December 2020 in relation to the revisions to the master plan. She also highlighted that a separate EIA was done in relation to the proposed jetty.

[74] The application for final approval for Range was also submitted to PADA before Ms. St. Louis assumed duties on PADA's board. Approval was granted subject to several conditions on 27th January 2020. She recalled that in March 2020, PADA's Board received the EIA Committee's report on the EIA. Ms. St. Louis

was of the view that the EIA report was a good report, but opined that it lacked a social component. Around that time, she highlighted that the developer had begun clearing the site without proper approval.

[75] The Board asked the EIA Committee to meet with the developer and conduct a site visit to assess what had been done. The Board received a report from the EIA Committee which highlighted several concerns and recommendations in relation to the clearing that had been undertaken and the proposed clearing to be done for the first phase of the project. She pointed out that it was agreed that any clearing would be done in a phased manner and that the developer would follow all of the EIA Committee's and PADA's rules and directives for the project.

[76] She deposed that Range submitted a separate application for lagoon enhancement, and an EIA for the proposed lagoon enhancement was submitted. Ms. St. Louis concluded that the Board received the EIA Committee's report in relation to the lagoon enhancement dated 12th January 2021 and approved the application on 27th January 2021, with several conditions as recommended by the EIA Committee.

Trevor Thompson's Witness Summary

[77] Mr. Thompson retired in September 2022, having served in the Ministry of Agriculture, Lands and Forestry of Grenada for 38 years as the Chief Land Use Officer. He was employed in the Land Department for more than 35 years and represented the Ministry of Agriculture on the EIA Committee for 1 and ½ years since it was re – established under the Act.

[78] Mr. Thompson recited that part of Hartman is designated as a protected area encompassing the Dove Sanctuary, as it borders the Dove Sanctuary, and the sanctuary is protected by law. Mr. Thompson deposed that the developers fenced off the area so that they did not encroach, as there would have been a buffer, which is a certain square footage of land in which there should be no human activity or construction concerning the boundary, referred to as a riparian zone or a setback.

[79] During Mr. Thompson's last visit to the project in 2022, the developers were in the process of erecting fencing recommended by the Forestry Division, using special material. An initial application for planning approval for a resort complex was submitted in September 2015 and an application for final approval was submitted in November 2015. A detailed EIA was submitted in respect of the project. As far as Mr. Thompson was concerned, the project did not infringe upon the protected area because the developers were aware from the start that the area was protected.

[80] At the time of the 1st EIA for the Hartman area, Mr. Thompson raised issues about the impacts on the environment, and about protection of the coastal assets, especially the mangroves. Mr. Thompson also highlighted concerns about ensuring public access to the beach in conformity with legislative requirements. Mr. Thompson also recommended that the protected areas and other cultural or historical landmarks within the area be preserved to see how the project could enhance access and use by the Grenadian people. The developers were made aware of other cultural and historical landmarks in the area that would need to be preserved.

[81] At the time, Mr. Thompson believed that once the recommendations were adhered to, there would be no negative impact on the environment. A new EIA was submitted for Hartman in January 2021. In Mr. Thompson's review, the new EIA considered some of the earlier recommendations that had been made on the earlier EIA, and nothing new stood out about the land use for the proposed development. The EIA Committee made further recommendations for rainwater harvesting, but the developer did not provide detailed drawings and sketches at that time.

[82] Up until the date of Mr. Thompson's departure from the Ministry, only preliminary drawings had been submitted by the developer. However, there was nothing that Mr. Thompson found that went unaddressed and he was satisfied that once mitigation measures were put in place and adhered to, the project would not have a negative impact on the environment.

[83] Mr. Thompson indicated that EIAs were done based on the phases of the project and not for the comprehensive project. He recalled that Hartman started doing temporary structures for their live in staff, and it was recommended that Hartman stop the construction of these structures. Sometime in August 2020, the EIA Committee became aware of unauthorized clearing of mangroves in the area. Mr. Thompson deposed that no works ought to have been commenced at that time, as the final application for the project and the EIA had yet to be submitted or approved by PADA.

[84] Once the EIA Committee was apprised of this, he indicated that they conducted an immediate site visit to assess the state of the site. Mr. Thompson also highlighted that the Committee met with the developers and gave directions for mitigation measures. Up to September 2022, final planning approval was not given for the project. Mr. Thompson noted that numerous EIAs were done that were rejected and sent back for revision, based on the EIA's Committee's recommendations.

[85] Mr. Thompson observed that development in Levera had a very long history, and over the years, many applications were made for development on this site and several EIAs had been conducted. He recalled that an application was made for planning permission in principle in December 2019, which was granted subject to almost 7 pages of conditions. The EIA Committee gave special consideration because of the project's location within the designated RAMSAR site. Mr. Thompson also noted that the RAMSAR area is 518 hectares and not the almost 1,200 that is on the Ramsar website, as 1200 hectares is more land than exists in Levera.

[86] If any development is to occur in that area, Mr. Thompson found that the main concern was ensuring that there are sufficient mitigating measures to protect the wetland. Regarding the earlier EIAs that had been done in the area, he recalled that the concerns were – impact on the Levera pond, the turtle nesting and watching and the access of the public to the area. He pointed out that the developer revised the master plan, reducing the site from 375 acres to 256 acres

to ensure that the buffer zone was created and that there were no negative impacts of the development on the pond and the turtles.

[87] Mr. Thompson deposed that the conditional approval in principle was revised to consider those changes. The EIA Committee also recommended several mitigation measures including the type of lighting to be used during and after construction for protection of the turtles, use of the land surrounding the pond and prohibiting the use of chemicals. Once those mitigation measures were adhered to, Mr. Thompson did not foresee any negative impacts on the environment. A sub-EIA was also requested in relation to the proposed jetty, which was to form part of the project. This EIA has only recently been received, and Mr. Thompson deposed that the EIA Committee was in the process of reviewing it. During Mr. Thompson's tenure, no final application for approval was given for the main project.

[88] Mr. Thompson also deposed that an application for planning approval for the La Sagesse project was made in October 2019 for the development of a Resort and Spa and conditional approval was granted in principle in 2020. An EIA was submitted and while it was being reviewed by the EIA Committee in March 2020, the developer began unauthorised works and contrary to the terms of the EIA that had been submitted.

[89] He recalled that the EIA Committee met on 10th March 2020 and decided to conduct a site visit and to meet with the developers regarding the matter. A meeting was held with the developers on 13th March 2020, and several mitigation measures were directed. Additionally, Mr. Thompson recalled that the developers were required to submit further information regarding water demand, sewerage and waste disposal and a system for public complaints.

[90] Mr. Thompson noted that the EIA Committee then began including the subcontractors who did the unauthorized clearing in meetings and site visits so that they could understand the procedures involved and the effect of their failure to comply with instructions. After this, he recalled that there was a drastic change in the way construction continued with this project, as there was

compliance with instructions and mitigation of damage to the surrounding environment. Mr. Thompson indicated that when the EIA was reviewed, there were several concerns about public access to the pond in the project area and the wetlands, and the general change of use of the area.

[91] Following the EIA Committee's reviews, Mr. Thompson recounted that several recommendations were made for drainage, pest management, deforestation and fishermen access. He also recounted that the Committee also instructed that the land clearing be phased, and on the EIA Committee's several visits to the land, they found no arbitrary land clearing. A separate application for planning permission was made in relation to the pond, and Mr. Thompson noted that a separate EIA was completed with respect to the pond enhancement and recommendations were made by the EIA Committee based on the EIA. During Mr. Thompson's tenure, the EIA Committee continuously monitored all developments at the site to ensure that the development was proceeding only as authorised and that proper mitigation measures were being implemented.

THE INTERESTED PARTIES EVIDENCE

HENG SHENG

<u>Kevin Zhu's Evidence</u>

[92] Mr. Zhu is the Managing Director of Project Construction at Heng Sheng. Heng Sheng is a company incorporated in Grenada and owned by Mr. Yunafa Li, an experienced property developer who hails from the Southwest of China. Mr. Zhu deposed that Heng Sheng was in the initial stages of substantial development of property in Levera. The parish is less developed than other parishes in Grenada and has historical, cultural and environmental importance to Grenada.

[93] Mr. Zhu indicated that Heng Sheng aimed to create a product that would take advantage of the existing natural amenities of the area and bring improved infrastructure, employment and recreational opportunities to residents of the area. He deposed that Heng Sheng has always been conscious of its statutory

and environmental responsibilities in developing the hotel and sought to comply with these.

[94] Mr. Zhu recounted that Heng Sheng's proposed development was a 17-story hotel resort with a casino, 3 villas, a clubhouse, an 18 hole golf course and fisherman's wharf constructed over 375 acres of land at Levera, reduced from 463 acres. In response to the concerns raised by Dr. Jody Daniel and Mr. Andre Joseph -Witzig in their evidence, he found that they were not relying on facts, but on their own perceptions of reality.

[95] Mr. Zhu lamented that GLA never communicated directly with Heng Sheng about any concerns with the proposed development, and Mr. Joseph – Witzig's evidence cherry picked what he wished to report, as Mr. Zhu found that he failed to give a balanced view. He averred that Heng Sheng has always complied with its statutory obligations under the Act, and has given its undertaking to do everything necessary to ensure the environmental sustainability of the development.

[96] Mr. Zhu deposed that Heng Sheng applied for approval in principle on 9th December 2019, which was granted on 18th December 2019. On 12th May 2020, Heng Sheng sought approval for a limited development on the Levera site to construct a temporary building, and approval was granted on 23rd June 2020. Mr. Zhu referenced that PADA indicated on 30th June 2020 that permission was only granted for activity on the part of the site that had been cleared. Public consultations were held on 30th July 2020, where Mr. Zhu highlighted that persons made comments for consideration by Heng Sheng and PADA.

[97] On 24th November 2020, Mr. Zhu indicated that Heng Sheng entered a confidential Memorandum of Understanding with the Grenadian Government, which provided for the creation of a buffer zone within the RAMSAR site, with only limited development being permitted therein. On 28th December 2020, he recalled that PADA granted approved in principle of a scaled down version of the Levera development.

[98] Mr. Zhu referenced that on 6th April 2021, further public consultations were held, and Heng Sheng presented its new proposal for development with measures to safeguard the natural environment and reduce the potential effects of the development. These included introducing solar power, rainwater harvesting, reuse of grey water, a 1/3 reduction of the development, the relocation of the proposed jetty from the beach, and further studies on the introduction of mitigation measures.

[99] Mr. Zhu recalled that PADA gave Heng Sheng permission to develop the golf course on 25th May 2022 and permission to develop the resort was granted on 15th June 2023, after the RAMSAR site has been delineated and updated. By this time, Mr. Zhu highlighted that the EIA reports had been completed and submitted to PADA, after the consultant gave the undertaking that all concerns would be considered.

[100] Mr. Zhu indicated that GLA's evidence was incorrect, as development permission was granted to Heng Sheng after consideration of ecological and other studies, and final planning approval was only given after the completion of the EIA. He insisted that the proposed development does not encroach on the boundaries of the RAMSAR site, and highlighted the newspaper report of 7th September 2020, which referenced the measures that were being taken to minimize the effect of the development.

[101] Mr. Zhu further noted that the PADA register could not have stated that the Levera development was approved on 23rd June 2020, as final approval was only given with conditions in June 2023. Mr. Zhu concluded that there were also at least 2 public consultations in July 2020 and April 2021 about the project, and Mr. Joseph – Witzig never approached Heng Sheng about the slides and tables, which he was unable to read at the consultations.

Nigel Niles' Evidence

[102] Mr. Niles is the Managing Director of Niles & Associates Limited, the company hired by Heng Sheng to conduct an EIA in relation to the Levera project. He was primarily responsible for preparing the environmental impact

study for the EIA. Prior to conducting the EIA, he provided Heng Sheng with an environmental profile for the Levera project for submission to PADA, which was approved and formed part of the preliminary approval for the Levera project.

[103] Mr. Niles recounted that terms of reference for the conduct of the EIA were produced by PADA's EIA Committee, after it conducted its own investigations as to what was required for a project of this nature. He recalled that these guided the conduct of the EIA, which covered issues that PADA needed to be addressed including marine issues and the need for public consultation. Mr. Niles indicated that he attended the site and conducted all relevant surveys, analyses and consultations over a period of time. This was done to give effect to the terms of reference.

[104] A final EIA report for the whole project was submitted to Heng Sheng in March 2021, together with detailed drawings. Mr. Niles recalled that this EIA was then submitted to PADA. After PADA's consideration, the EIA and project were approved. In response to Mr. Joseph – Witzig's evidence about the EIA's inadequacies, Mr. Niles recounted that Niles & Associates complied with PADA's Terms of Reference and thereafter PADA granted approval, and the project as a whole evidenced satisfaction of the EIA. Mr. Niles observed that 3 parties can offer their opinions of best practice, but PADA ultimately determines whether it is satisfied.

[105] Mr. Niles further indicates that the EIA produced by Niles & Associates covered the entire project, including the golf course as it was then designed, and the general issues about the golf course were addressed to PADA's satisfaction. He pointed out that Niles & Associates provided an EIA for the jetty on 20th January 2021, based on the design and location given to them at the time they were engaged, and the advice given was professional, adequate and met PADA's approval. Mr. Niles concluded that the EIA produced by Niles & Associates was approved by PADA under its powers and should be regarded as adequate for its purposes as required by the Act.

HARTMAN GROUP

Cherelle Bain's Evidence

[106] Ms. Bain is Hartman's in house legal counsel. Ms. Bain deposes that Hartman Group has complied with all of the legal requirements of the Act. She concluded that any issues raised by PADA were promptly addressed, as the plans and designs of Hartman Group addressed GLA's concerns.

RANGE

Kamal Shehada's Evidence

[107] Mr. Shehada is a businessman and one of the beneficial owners of Range Development and the La Sagesse project. He deposed that Range is a company incorporated in Grenada and the land on which the La Sagesse project is located is owned by Range as is evidenced by Deed of Conveyance dated 19th March 2019. He recounted that Range applied by letter of 5th February 2019 to PADA in the required format as set out in the Act. On 28th February 2019, Mr. Shehada noted that PADA granted approval in principle to Range for the project. On 29th January 2020, he recalled that PADA granted final approval to Range, who abided with all the conditions which attached to the planning permission.

[108] Prior to and throughout the construction phases, Mr. Shehada insisted that Range engaged in public consultation by holding town hall meetings, meetings with farmers, and local community persons who they now know are the principals of GLA. On 2 scheduled dates, he recalled that none of GLA's representatives attended any public consultations, but all concerns otherwise raised were addressed by Range. In his eyes, these meetings made clear that persons from GLA were not willing to engage with Range scientifically or technically, as they had a predetermined agenda and it seemed that the environmental issues raised were a smokescreen for their real intentions.

[109] Mr. Shehada reaffirmed that Range held various public consultations and raised awareness through television and radio programs which Mr. Shehada attended and hosted. He referred to several email communications

with persons, including those from GLA, and communications through social media platforms including Facebook. Mr. Shehada deposed that he shared information and communicated with 2 persons involved in the matter, Dr. Daniel and Mr. Joseph – Witzig. Apart from Dr. Daniel, Mr. Shehada lamented that Range does not know who are the persons connected to GLA..

[110] On the issue of the EIA, Mr. Shehada responded that Range had conducted the required EIAs for the project including marine studies and water testing on a regular basis. He recalled that Dr. Daniel approached him personally via email and social media in her individual capacity, and Range shared various communications with her including reports pertaining to the project's development during 2020. It is Mr. Shehada's belief that GLA became an incorporated entity wholly to pursue this action, as it was incorporated only a few days prior to the commencement of the claim in April 2021, 1 year and 3 months after PADA granted final approval to Range on 29th January, 2020.

[111] Range also has video footage of the former owner of the land, Dr. Mitchell, indicating at a town hall meeting that for all his 70 years, he has never known the pond, referred to as a salt pond, to actually be a salt pond. Mr. Shehada recited that Range, in its continued awareness of the protection of the environment, took the initiative to these concerns and caused the pond to be tested. Mr. Shehada indicated that these tests have not provided evidence that the pond is in fact a salt pond.

[112] Mr. Shehada further deposed that when the land was purchased, the pond was backfilled and full of garbage. Range cleared this debris away and dug out the pond. Range's understanding from the former owner was that the pond was in that condition since he purchased the land from the vendor before him. He indicated that Range extracted 250,000 lbs of garbage and 100, 000 cubic yards of sludge from this pond, which enabled them to conduct tests on the pond and the water in it.

[113] Mr. Shehada recounted that it is only due to the environmental enhancement and improvement work done by Range that marine life is present

and the birds have a clean nesting ground. Mr. Shehada insisted that the removal of garbage and sludge also prevented it from future escape onto the beach. He mentioned that Dr. Daniel referenced in her evidence that the lake was higher than the sea, so that overflow would have happened. Thus, through its work, he challenged that Range averted a disaster. Mr. Shehada admitted that mangroves were removed by a subcontractor in error and the removal facilitated the cleaning, clearing, sludge and garbage removal to provide for a fresher cleaner environment. Mr. Shehada reported that Range has since replanted these mangroves and there is a dedicated nursey for replanting of mangroves once the project is completed.

[114] Mr. Shehada recalled that throughout construction, the public was granted continued access to the La Sagesse beach and no one has ever been prevented from doing so by Range. However, he cautioned that persons would be best advised not to use this beach area, as there were rough seas, riptides and under currents in the water. Mr. Shehada also pointed out that Range has provided numerous jobs to the Grenadian work force and continued to do so, with approximately 200 – 300 permanent jobs, the provision of a car park and recreational and toilet facilities.

[115] Mr. Shehada reiterated that GLA's principals sat back for more than a year after Range had done significant development works, then incorporated themselves into a legal entity to mount a challenge on the La Sagesse and the other 2 developments. He further indicated that GLA has no track record of work done in environmental protection or advocacy, except in seeking to challenge all major developments across the island. He noted that Range has now completed approximately 95% of the development works, the remainder of which will be completed by the end of 2023, with a proposed opening date of February 2024.

ISSUES FOR THE COURT'S DETERMINATION

[116] The following are the issues that arise from GLA's claim, PADA's response and the evidence of GLA, PADA and the 3 Interested Parties before the court –

(1) the concerns about evidentiary matters;
(2) GLA's claims about the public register;
(3) GLA's claims about the lack of regulations;
(4) Whether PADA was required to conduct public consultations;
(5) Whether PADA was required to give reasons for its decision to grant planning permission for the 3 projects;
(6) Whether the decisions made by PADA with respect to the La Sagesse, Levera and Hartman developments were impugned by illegality, irrationality, procedural unfairness and/or in breach of legitimate expectations;
(7) Whether GLA has standing to bring this claim;
(8) Questions of delay; and
(9) What, if any relief, should be granted to GLA.

[117] In the interest of avoiding repetition and prolixity, issues 1 – 5 above will be discussed collectively. The remaining issues will thereafter be examined in turn. The court has determined these issues, considering all of the pre-trial and post-trial submissions of GLA, PADA and the 3 Interested Parties.

THE CONCERNS ABOUT EVIDENTIARY MATTERS

[118] The crux of the complaint on this issue involves the evidence given by Mr. Andre Joseph-Witzig and Dr. Jody Daniel on behalf of GLA, and more particularly the EIA review reports prepared by GLA/GAEA and exhibited to their evidence. This concern was initially raised on the first day of trial on 2nd October 2024 by PADA's counsel and the Interested Parties.

[119] Counsel raised many concerns about the evidence of these 2 witnesses, submitting to the court that these witnesses presented themselves as experts on various environmental matters in the claim, and have presented

expert reports to the court, without having first sought leave to do so. GLA's evidence, which I have recited extensively above, consists in the main of their views on the adequacy of the EIAs as outlined in their reports and of the overall evaluation and determination process undertaken by PADA in granting planning permission.

[120] All parties eventually concurred during the trial that some of the evidence may amount to opinion evidence. PADA and the Interested Parties have insisted that this evidence is not admissible and, even if admissible, very little or no weight ought to be attached to it. GLA's posture on the issue changed significantly as the matter progressed.

PADA's objections on evidentiary matters

[121] In its post-trial submissions, PADA's objections focused on GLA's intention to rely on their expert review of the projects to support their charges against the PADA as contained in the reports[8]. PADA submits that while the views expressed in GLA's reviews regarding the inadequacy of the EIAs may be admissible to show that this opinion was held and presented to the decision-maker, it is not admissible to prove the actual inadequacy of the impugned EIA report. PADA relied on **R (on the application of Gardner) v Secretary of State for Health and Social Care et al**[9] to make the point that –

> "…in judicial review proceedings, **evidence of opinion is admissible primarily to show that such opinions were held and expressed to the decision-maker, rather than to support the arguments made to the decision-maker**. The weight accorded to such opinion evidence in judicial review proceedings is generally limited. **The court is primarily concerned with the lawfulness of the decision-making process rather than the merits of the decision itself"**[10]. (bold emphasis mine)

[8] See paragraph 5.94 of PADA's post-trial submissions filed on 6th December 2024
[9] 2021 EWHC 2946 (Admin)
[10] Ibid at 36

Heng Sheng's objection on evidentiary matters

[122] Heng Sheng submits that the following paragraphs of GLA's evidence are purely opinion evidence of GLA's deponents and ought not to be relied on by the court –

'paragraph 31 of Andre Joseph – Witzig 1st Affidavit;

Paragraphs 5, 8, 9, 10 and 11 of Andre Joseph – Witzig 4th Affidavit;

Paragraphs 13 and 18 of Dr. Jody Daniel's 2nd Affidavit;[11]'

[123] Heng Sheng submits that these paragraphs go beyond the witnesses using their expertise to state matters of fact, as the statements are in effect opinions offered on the documents received by PADA, which ought to be subject to Part 32 of the Civil Procedure Rules 2023 (CPR)

Hartman's objection on evidentiary matters

[124] Hartman confronts the evidentiary issues more vigorously, arguing that the evidence regarding the Hartman project contains "…inadmissible opinion evidence and ought to be struck out…[12]". Hartman relies on rule 30.3 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 and case law[13] to make the following observations –

(1) It is not permissible for "ordinary witnesses" to give their "opinion, conclusions, inferences or speculation" especially on matters of fact and law which are matters only within the Honorable Court's remit to decide on."[14] This is of particular significance since a witness "*may only attest to that which is within his personal knowledge. The drawing of*

[11] See paragraph 71 of Heng Sheng's post – trial submissions filed on 11th December 2024
[12] See paragraph 37 of Hartman's post-trial submissions filed on 9th December 2024
[13] Cellular Planet Limited v Minister of Public Utilities TTHCV2023/02624; Almarales v Director of Personnel Administration & Another TTHCV2014/02019; American Life Insurance Company and RBTT Merchant Bank Limited TTHCV2008/0215; Gleeson v Wipple [1997] 3 ALL ER 54, The Attorney General of Trinidad and Tobago and Akili Charles TTHCVAP No. P-19 of 2020; The Public Service Commission of Trinidad and Tobago v The Permanent Secretary Ministry of Energy and Energy Industries TTHCV2017/02934; Tucker Energy Services Limited v Weatherford Trinidad Limited TTHCV2010/02730
[14] Paragraph 39 of Hartman's post-trial submissions filed on 9th December 2024

inferences from those facts is the function of the court, not the witness…"[15]

(2) Affidavits in judicial review matters "*are written evidence and should not contain legal arguments or submissions. Conclusions of witnesses or opinions on matters which are for the court to decide are inadmissible and affidavits are not to be used as vehicles for witnesses to present complex legal arguments or submissions*."[16]

[125] For these reasons, Hartman suggests that the following parts of GLA's evidence must be struck out[17] –

(1) Second Affidavit of Dr. Jody Daniel filed on 30th October 2023, paragraphs 21, pages 18 and 19;
(2) Third Affidavit in Reply of Andre Joseph-Witzig filed on 2nd November 2023, Paragraph 53, Line 4;
(3) Fifth Affidavit of Andre Joseph-Witzig filed on 21st February 2024; Paragraphs 5 and 6;
(4) Exhibit AJW16 (the review of the Hartman project conducted by Hartman).

Range's objections on evidentiary matters

[126] Range charges that "there being no independent expert witness appointed by the court, the Claimant (GLA) is not entitled to rely on the opinion evidence of its witnesses or which may be contained in any documents filed on its behalf in support of its case."[18] Range take the view that GLA's "concession of sorts" that its witnesses provided opinion evidence should be enough to exclude those opinions from the court's consideration. Range has also found it curious that GLA would make this concession at trial, and then seek to later rescind it in submissions.

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[15] Citing Aboud J in American Life Insurance Company and RBTT Merchant Bank Limited TTHCV2008/0215
[16] See paragraph 41 of Hartman's post-trial submissions filed on 9th December 2024
[17] See paragraph 43 of Hartman's post – trial submissions filed on 9th December 2024
[18] See Range's post-trial submissions filed on 12th December 2024

[127] Range avers that if GLA's assertions are correct, then it would present a significant exception to the CPR rules on how experts are appointed. Range explains that there is a stark difference between the test for standing in judicial review and the basis upon which someone may be allowed to give expert evidence and referenced **Everton Cornelius Trading as VEC Construction Company v Allan Stevens and another**[19] that expert witnesses must be independent. Range concludes that GLA's review of Range's EIA should be afforded no weight whatsoever.

GLA's positions on evidentiary matters

[128] GLA addressed the challenges to Mr. Andre Joseph-Witzig and Dr. Jody Daniel's evidence in its trial submissions[20], post-trial submissions[21] and its reply to post-trial submissions[22]. In its trial submissions, GLA initially accepted that Dr. Daniel and Mr. Witzig were not appointed as experts and could not provide opinion evidence to the court. Notwithstanding, GLA invited the court to follow the learning in **R (Gardner) v Secretary of State for Health and Social Care and others**[23] and not "adopt an excessively purist approach"[24], submitting that it would be disproportionate to go through the evidence line by line, specify each issue and have it struck through.

[129] GLA instead suggested that the court ought to treat the evidence as admissible and provided a comprehensive table explaining reasons why the evidence referenced was admissible[25]. In its post – trial submissions, GLA reiterated its position, accepting that the witnesses could not give opinion evidence but highlighting several important caveats. These caveats will not be recited in view of the later posture taken by GLA.

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[19] [2008] ECSCJ NO. 133
[20] See trial submissions filed by GLA on 3rd October 2024 in response to evidential objections raised at trial on 2nd October 2024
[21] Filed by GLA on 31st October 2024
[22] Filed by GLA on 23rd January 2025
[23] [2021] EWHC 2946 (Admin) at 14 - 17
[24] [2021] EWHC 2946 (Admin) at 17
[25] See pages 5 – 12 of GLA's trial submissions filed on 3rd October 2024

[130] In its post-trial submissions in reply, GLA then took the position that its earlier concession may have been improper[26], submitting that –

> "On reflection and further research, the Claimant withdraws its previous, incorrect concession of law, namely that Dr Daniel's and Mr. Joseph-Witzig's statements of opinion are not admissible because they have not been appointed as independent."

[131] GLA submits that the principle is therefore that –

> "the common law does not prohibit non-independent witnesses of fact, who also happen to be experts in the relevant field, from giving their opinions on matters related to the factual evidence they give. Such evidence is not independent expert evidence, but that is a consideration that goes to weight, not to admissibility."[27]

[132] GLA relies on pronouncements in **Gardner** to make the following points –

(1) part of GLA's case is that it was wholly irrational for PADA to rely on defective EIAs to arrive at its decisions. Some of the defects in the EIAs are obvious to detect but others require technical expertise to expose them. To the extent that Mr. Andre Joseph-Witzig and Dr. Jody Daniel's evidence highlight ""technical errors" in the EIAs "*of a kind which is not obvious to an untutored lay person… but can be demonstrated by a person with relevant technical expertise*, *their evidence is both relevant and admissible in a challenge to the rationality of the decisions*;"[28]

(2) Admitting relevant expert opinion evidence ensures that judicial review is *"…informed and effective, particularly when*

[26] See paragraph 3 of GLA's post-trial submissions filed on 23rd January 2025
[27] Ibid
[28] See paragraph 7 of GLA's post-trial submissions filed on 23rd January 2025

addressing technical issues.[29] To exclude this evidence *"risks undermining the fairness and accuracy of the court's decision.*"

(3) Admitting the evidence also ensures that "*the Defendant is held accountable for its decision-making process, especially when the outcome has significant implications for public trust and environmental protection*."

(4) The evidence should also be let in on public policy grounds since " – The public has a vested interest in ensuring that decisions affecting environmental sustainability are scrutinised thoroughly. Where technical flaws in EIAs undermine the rationality of such decisions, the court's role in upholding environmental governance becomes indispensable. Admitting this evidence serves not only the Claimant's case but also reinforces public confidence in the judicial process."[30]

My thoughts on the evidentiary matters

[133] I am cautious about GLA's reliance on **MAD Atelier International BV v Manes**. **MAD Atelier International BV v Manes**[31], as that case did not concern judicial review, but rather involved the admission of expert evidence in litigation regarding a dispute about a joint venture agreement. As was said in **Gardner**,

> *"…judicial review claims are not treated in the same way, for the reasons given by Legatt LJ and Carr J in the Law Society"*[32].

[134] The guidance for admitting expert evidence in judicial review claims is as is stated in **Gardner** where their Lordships (reciting from **R (Law Society) v Lord Chancellor [2019] 1 WLR 1649**) observed that –

[29] See paragraph 7 of GLA's post-trial submissions filed on 23rd January 2025
[30] See paragraph 8 of GLA's post-trial submissions filed on 23rd January 2025
[31] [2021] 1 WLR 5294
[32] [2021] EWHC 2946 at 3

"The use of expert evidence in judicial review proceedings, as in all civil proceedings, in the High Court is governed by CPR Part 35. CPR 35.1[33] 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."[34]

[135] In this context, the rule is that beyond the evidence with respect to the decision under review, the following is generally permissible –

"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."[35]

[136] The foregoing was the approach suggested by the court in **R v Secretary of State for the Environment, ex parte Powis**[36] but his Lordship in **Gardner** opined that while "…*those categories are a useful and well-established list, it would be wrong to treat them as if they were embodied in statute or as*

[33] CPR 2023 Part 32 is the equivalent procedural rule which governs expert evidence in our courts
[34] [2021] EWHC2946 at 3
[35] Ibid, citing from Dunn LJ in R v Secretary of State for the Environment, ex parte Powis [1981] 1 WLR 584 at 595
[36] [1981] 1 WLR 584

necessarily exhaustive. That is particularly so as public law has developed in ways which were not in contemplation when the Powis case was decided."[37]

[137] Relying on dicta from his Lordship Collins J in **R (Lynch) v General Dental Council**[38], the court in **Gardner** suggested 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]

[138] It would seem therefore that rather than adopting the posture as suggested by Hartman that the highlighted evidence produced by Dr. Daniel and Mr. Joseph Witzig is wholly inadmissible, I will approach the matter in the manner suggested by the court in **Gardner**. Firstly, as was the case in **Gardner**, PADA's evidence is that the technical reviews conducted by Dr. Daniel and Mr. Joseph Witzig were among the material that PADA considered when it made several of the decisions being challenged in this case[40].

[139] GLA's reviews may therefore be relevant as part of all the material that was before PADA when it made the decisions now under challenge. To the extent that Dr. Daniel and Mr. Joseph Witzig's reviews and witness statements argue or comment on the propriety, adequacy or rationality of PADA's actions or perceived inaction, this court may be constrained, like the court in **Gardner**, to disregard such evidence and accord no weight to it.

[140] Secondly, the material may be relevant and admissible to the extent that it assists to "explain …technical matters"[41], where this court is of the view that the material considered by PADA requires elucidation to understand PADA's rationale (or lack thereof) for making its decisions. It does not need

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[37] [2021] EWHC 2946 at 3
[38] [2003] EWHC 2987 (Admin)
[39] [2021] EWHC 2946 at 3
[40] See Trial Bundle 2 at page 95, paragraph 10 of the 2nd Affidavit of Carlton Frederick and Trial Bundle 2 at page 125, paragraph 9 of the Affidavit of Nyasha Moore – Regis
[41] [2021] EWHC 2946 at 4

elaborating that if there is no need for technical elucidation, then the material may not be relevant and very little or no weight may be given to it. This was indeed the posture taken by the court in **Gardner**.

[141] In **R (Lynch) v General Dental Council**[42], Collins J was tasked with determining whether fresh evidence in the form of expert opinions should be admitted. In light of the nature of the claim, which required technical expertise to distill the issues, His Lordship accepted that expert evidence may be admitted where the evidence falls within the guidelines outlined in **Powis**. His Lordship nonetheless noted that –

> " … it is and has always been recognized that irrationality is an error of law which can lead to a decision being quashed. If the decision in question is made by an expert tribunal or indeed by anyone dealing in a field involving consideration of matters which would not obviously be fully understood by a layman without some assistance from an expert in that field, it may be necessary at the very least to have some explanation of any technical terms."[43]

[142] His Lordship was careful however, to point out that the court's supervisory role in these sorts of claim should not be usurped. The distinction being drawn was explained thusly –

> "But it seems to me that the court must be enabled to carry out its function. To do this it must understand the material which is put before it. **There is in my view a real distinction between a report from an expert which seeks to explain what is involved in a particular process (in this case, treatment) and how complicated that process is and one which goes on to opine that it was irrational for the body to have reached the conclusion it did"**[44]. (Bold emphasis mine)

[42] [2003] EWHC 2987 (Admin)
[43] Ibid at 22
[44] [2003] EWHC 2987 (Admin) at 24

[143] Counsel for Hartman has helpfully presented a tabulation of quite a few paragraphs of the witness statements purportedly impugned for being in the form of opinion evidence. The court in **Gardner**[45] adopted the approach of Fraser J in **R (The Good Law Project Ltd) v Minister for the Cabinet Office**[46] to the extent –

> ""48. … In so far as these other paragraphs contain comment rather than evidence, I do not propose to go through line by line and remove or specify each comment and have it struck through. That exercise has nothing to recommend it, is unnecessary, and it would be disproportionate to do so.
>
> "49. **The weight given to the different evidence will be considered by the judge tasked with the substantive judicial review hearing, and that will be done in accordance with the normal approach of the court**. Ordinarily, few (if any) judges will be much impressed by witnesses making comments, or telling the court how much expertise they possess in particular fields.… **However, the better way to deal with such matters is often for counsel, at the substantive hearing, simply to submit to the court passages where the submission is that little weight ought to be given to specific parts of the evidence of that nature**. That is usually a more cost effective and sensible way to proceed than having a full-blown interlocutory battle. There is no risk that the hearing will be prolonged, unduly or at all, by permitting the limited comments included in the statements of [relevant witnesses] presently to remain."[47]

[45] [2021] EWHC 2946
[46] [2021] EWHC 2091
[47] [2021] EWHC 2946 at 3

[144] To summarize, Dr. Daniel and Mr. Joseph Witzig's evidence will be considered in the following manner –

(1) The expert reviews are relevant to the extent that PADA accepts that it considered those reports as part of its deliberation on whether to grant or refuse planning permission to the interested parties;

(2) The opinion evidence contained in the witness statements may be considered to the extent that they recite facts about the technical assessments conducted by Dr. Daniel and Mr. Joseph Witzig and were considered by PADA. It need not be repeated that these matters will be considered along lines of relevance and weight as required in claims of this nature;

(3) To the extent that this court considers that the material may or may not assist with an understanding of technical matters that may require elucidation. A word of caution may be necessary here. PADA has placed a considerable amount of material before this court as to what it considered in arriving at its decisions. This includes quite extensive expert assessments of its own including the EIAs. At first blush one may not be in a position to say how, in view of all PADA has placed before this court, further elucidation from GLA's opinion evidence may be required. I am however prepared to leave the material in for the time being and will assess its relevance as I deliberate on the claims being made.

(4) Where Dr. Daniel and Mr. Joseph Witzig's evidence extends to commentary on the adequacy, rationality, propriety or otherwise of PADA's decisions, this material will be ignored and afforded no weight, since their assessment of such matters is inadmissible opinion evidence.

GLA'S CONCERNS ABOUT THE PUBLIC REGISTER

[145] GLA has raised concerns about the public register and has sought orders of mandamus, asking this court to direct PADA to update the public register to include the planning applications for the 3 developments. GLA has also sought an order that all the material outlined in section 69 of the Act be provided to it, as GLA alleges that it previously sought this information from PADA and were denied access to.

[146] Section 69 of the Act provides that –

> "(1) The Authority shall maintain a register containing particulars of–
>
> (a) any application under section 19 for permission to develop land, including the name and address of the applicant, the date of the application and the development which is the subject of the application;
>
> (b) the date and effect of any decision made in respect of any application;
>
> (c) any appeal under section 59 in respect of such a decision and the decision made on the appeal;
>
> (d) any commencement notice received under section 26(2) and any completion certificate issued under section 26(5);
>
> (e) any modification or revocation under section 28 of any permission granted in respect of any application;
>
> (f) any enforcement notice or stop notice issued in respect of (g) any permission granted under regulations made under section 49(1) for the display of an advertisement;
>
> (h) any other matter required by this Act or the regulations to be included in the register.
>
> (2) The register kept by the Authority pursuant to subsection (1) shall include an index, in the form of a map, and both the register and the index may be kept in an electronic data storage and retrieval system.
>
> (3) Every entry in the register shall be made within 7 days of the date on which the decision, notice or event to which it relates was made, filed, issued or done.
>
> (4) The register shall be kept at the office of the Physical Planning Unit and any person is entitled to access to the information

> recorded in it free of charge and to take copies of the information on payment of the prescribed fee any development of land;"

[147] GLA complains that PADA has a statutory obligation to properly maintain the public register and to permit access, which PADA failed to do. Both Sandra Ferguson and Dr. Daniel described their challenges in accessing and inspecting the register, and with obtaining copies of documents. PADA admits that due to staffing deficiencies the public register was not always updated within the statutory timeframe of 7 days. PADA rejoined though that GLA would have been granted access, had it followed PADA's procedures. PADA submits that the failures were due to logistical challenges, rather than an outright denial of access as alleged by Ms. Ferguson.

[148] Ms. Ferguson's evidence suggests that she began her enquiries by sending correspondence to PADA in November 2019, requesting reports and information on certain developments. There was an exchange of correspondence between PADA's Mr. Frederick and representatives of GLA about her request. By her own evidence, it was not until almost 4 months later, in March 2020, that Ms. Ferguson personally visited PADA to follow up on her request. It was at this time that she alleges that access to the register was refused by Mr. Frederick. Section 69 (4) of the Act stipulates that any person is permitted to inspect the register. This court finds that Ms. Ferguson ought to have been allowed to do so in compliance with section 69 (4) of the Act. Dr. Daniel met with a better fate since she met with Mr. Frederick and was shown architectural plans concerning one of the projects.

[149] Mr. Frederick's evidence shows that after receipt of GLA's letters, he sought advice from the Ministry of Legal Affairs. He later advised GLA by letter dated 12th March 2021 that access was permissible and that documents could be copied, once the prescribed fees were paid. There is no evidence from GLA or PADA that there was any subsequent communication on GLA's requests after Mr. Frederick's response, until GLA's communications with Mrs. Moore – Regis

via email in October 2022. In that email GLA requested access and copies of documents concerning the Levera project[48].

[150] From GLA's subsequent communications to Mrs. Moore – Regis in 2023, it would appear that the requested documentation related to the Levera project was provided to GLA, since GLA thereafter provided its report critiquing the Levera EIA[49]. No mention is made in these correspondences on the issue of payment of the prescribed fees prior to receiving the documents requested.

[151] The objects and purpose of the Act are defined comprehensively in section 3(1)–

> "(a) ensure that appropriate and sustainable use is made of all publicly-owned and privately-owned land in Grenada, in the public interest;
>
> (b) facilitate a continuous improvement in the quality of life of every person in Grenada;
>
> (c) provide for the orderly, efficient development of the resources of Grenada, taking account of all relevant social, economic and environmental factors, so as to ensure that sustainable use is made of land in the interests of all the people of Grenada;
>
> (d) maintain and improve the quality of the physical environment within which human settlements are situated in Grenada;
>
> (e) provide for the orderly sub-division of land and the provision of services in relation thereto;
>
> (f) secure the health, safety, welfare and convenience of persons in or about buildings, and of others who may be affected by buildings or matter connected with buildings;
>
> (g) contribute to the protection and conservation of the cultural heritage of Grenada, as it finds expression in the natural and the built environment;
>
> (h) foster awareness that all persons and organisations owning, occupying and developing land."

[152] Section 3(2) of the Act also mandates that a broad and purposive interpretation of the Act should be adopted in its application. This prescription lends support to the view that the objectives of the Act are to be pursued in a transparent manner. A transparent approach dictates, among other things, that

[48] See Trial Bundle 3, Part 7 at page 1910
[49] See Trial Bundle 3, Part 7 at pages 1914 and 1915

those affected or likely to be affected in the exercise of planning powers are considered when these decisions are made and that those responsible for exercising planning powers exercise them in the most prudent and effective manner. I am of the view that PADA's indications about "administrative" and "logistical" challenges do not fall within the mandate of furthering the objectives of the Act.

[153] GLA has asked the court to make comprehensive pronouncements on what the register ought to contain. In the absence of specific regulations outlining what the register ought to contain, the public register should contain the material mandated by section 69. Useful guidance on the extent of material to be included in the public register has been provided by the Court of Appeal in **Director of Physical Planning v Anne Hendricks Bass**[50]. In **Bass,** Webster JA approached this question from a liberal and purposive interpretation of section 47[51] and stated that –

> "The two main issues that call for interpretation in section 47 are (a) what is the information or particulars that should be in the registers kept under the section, and (b) what is the extent of the public's access to that information. In relation to the content of the registers, … **the register must be in a form that allows the public to have access to sufficient information to allow them to be able to make a proper assessment of the development that is contemplated**…To achieve this objective, the information in the register cannot be limited to what the Director sees fit to note in the register. A brief perusal of the register for the Development shows how unhelpful the notations in the register can be... There is no mention of the ongoing dispute which is before the High Court regarding environmental issues and no real details of the scope of the development. We do not think that this was the intention of the legislation. **The use of the word "information" in subsection 5 and the requirement for an index are clear indications… that the register means the information actually recorded on the register**

[50] SKBHCVAP2017/0002

[51] Pari materia to section 69 of the Act

itself and the supporting documents which must be listed in the index and which form a part of the register."[52] (bold emphasis mine)

[154] On the contents of documents to form part of the register, the Court of Appeal in **Bass** agreed with the trial judge's finding that –

> "…the register contemplated by section 47(1) are documents including but not limited to:
>
> (i) The actual application made for planning permission;
>
> (ii) The plans of the project;
>
> (iii) Any amendments or revisions to the application;
>
> (iv) Related applications;
>
> (v)Environmental impact assessments amended thereto or supplemental environmental impact assessments; and
>
> (vi) Any notices issued and all related documents in relation to that particular application for development."[53]

[155] Excerpts from the public register were disclosed by PADA[54], and from a review of these disclosures, the Court of Appeal's reasoning of unhelpfulness rings true. Only 4 of the applications concerned with this claim were clearly visible, with sparse information outlined on the projects. These recitals would not enable anyone to glean the nature and status of an application (outside of whether it was granted or refused) as required by statute.

[156] Further, and even more worrisome is the fact that the evidence disclosed does not show that the application for permission for the Levera development forms part of the public register. GLA's complaint of being unaware that the Levera development had only been granted approval in principle when this claim was commenced in 2021 highlights the challenges that can be caused by noncompliance with the statutory dictates. This is a glaring failure of the PADA of its statutory duty and complaints of staffing inefficiency carry the issue no further. The register must be maintained in the manner dictated by law, and

[52] SKBHCVAP2017/0002 at 15 – 17
[53] SKBHCVAP2017/0002 at 18
[54] See Trial Bundle 3, Part 7 at pages 2031 – 2035

a declaration on PADA's failure to maintain the register will be given in this regard. An order of mandamus directing PADA to update the register and provide the documents as requested by GLA in its Re – Amended Fixed Date Claim Form, conditional on payment of the prescribed fees will also be given.

GLA'S CONCERNS ABOUT THE LACK OF REGULATIONS;

[157] On this issue, GLA relies on the cases of **M v Scottish Ministers**[55] and **Greater London Council v Secretary of State for the Environment**[56] to make the point that where a statute confers a discretionary power to make regulations, a failure to exercise that power may be unlawful where such regulations are necessary for the proper functioning of the statutory scheme. GLA posits that the failure to make regulations frustrates Parliament's intention. GLA submits that most of the issues in this claim, such as the woefully inadequate EIAs conducted by the Interested Parties and lack of proper public consultation are examples of the effects of the lack of regulations to guide PADA's exercise of its statutory obligations.

PADA's response

[158] PADA submits that the power to make regulations under section 22(4) of the Act is vested in the Minister and not in PADA, so that it is erroneous to maintain that PADA acted unlawfully in failing to make regulations[57]. PADA also points to the discretionary nature of section 22(4) to make regulations. PADA submits that the section empowers, but does not mandate the Minister to promulgate regulations under the Act. PADA also cautions the court about making a formal declaration on the absence of regulations where the Minister is not before the court, and where the failure to promulgate regulations has not rendered the statute inoperable.

55 [2012] 1 WLR 3386
56 [1984] JPL 424
57 See paragraph 16.5, 21.8, 21.9 and 44.3 of PADA pre-trial submissions filed on 20th September 2024 and paragraph 73 et seq of PADA's closing submissions filed on 6th December 2024

Heng Sheng position on the regulations issue

[159] Heng Sheng also approaches this issue in a manner similar to PADA, submitting that the Minister is not a party to these proceedings. Accordingly, if any statutory duty to make regulations has been breached, Heng Sheng submits that the breach would have been the Minister's, and not PADA's. Heng Sheng indicates that the question of whether there is an obligation rather than a discretion to make regulations is a matter of statutory interpretation. Heng Sheng points out that no evidence has been led to support GLA's assertions about PADA being hampered in discharging its public duties due to the absence of regulations. Heng Sheng also submits that this issue is fact sensitive and relied on **Sharma v Registrar to the Integrity Commission**[58], where the Privy Council emphasized that it was for the statutory body to determine whether regulations were necessary to carry into effect the purpose of the Act.

My thoughts on the regulations issue

[160] Section 22(4) of the Act[59] provides that the Minister may make regulations for the criteria, procedure and minimum content of EIAs, qualifications for persons conducting EIAs, the procedures for public participation in the EIA process, the establishment of the EIA Committee and any other matters necessary to give effect to the section. This court is mindful of PADA's admonition (and to some extent, Heng Sheng's as well) about making a formal declaration since the Minister is not a participant in these proceedings.

[161] I am also mindful of PADA's evidence about what it was able to achieve as a planning body, even without promulgated regulations. PADA's evidence, which has not been refuted or challenged by GLA in any substantive way, is that it was able to provide Terms of Reference to EIA consultants, establish an EIA Committee and that the Committee held meetings to make decisions on planning applications. GLA has lamented that no minutes of meetings held by the PADA were disclosed in furtherance of PADA's evidence. However, from

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[58] [2007] UKPC 42

[59] As amended by the Physical Planning and Development Control (Amendment) Act No. 23 of 2017

the documentation disclosed, there is in fact evidence before the court of meetings held by the ad hoc EIA Committee[60], their observations, reports and recommendations with respect to the 3 developments[61]. While one may be concerned that the documentation is not as comprehensive as would be hoped for in matters of this nature, this court finds that, notwithstanding, there is sufficient information for this court to glean what was before PADA and what was considered by it. This material will assist the court in its later determinations when reviewing PADA's actions or inactions as alleged by GLA.

[162] PADA's evidence is also that it conducted public consultations with internal and external stakeholders which PADA found to be relevant, that it outlined (of its own accord) gaps in documents submitted with the various applications and made recommendations to the developers for adjustments to be made. While I accept that regulations would greatly assist PADA in the exercise of its duties, GLA has not shown on the evidence that PADA was significantly hampered or unable to exercise its public duties under the Act in the absence of or due to the absence of regulations.

[163] The obligation to make regulations is that of the executive arm of government through the Minister with responsibility for Planning and Development as stipulated in section 2 of the Act. The making of regulations is therefore a matter for executive discretion and execution, and not judicial pronouncement. This case concerns the actions of PADA, and as the Minister has not been joined to these proceedings, I am constrained in the approach and orders which I will make.

[164] The objectives of the Act are clearly outlined, and this position is bolstered by the learning in **Regina v Secretary of State for The Home Department, ex parte Fire Brigades Union and Others**[62], where Lord Browne – Wilkinson cautioned –

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[60] See Trial Bundle 3, Part 31 at pages 3554 – 3578 and Trial Bundle 3, Part 1 at pages 217 – 222
[61] See Trial Bundle 3, Part 30 at pages 3512 – 3519, Trial Bundle 3, Part 31 at pages 3521 – 3552 and Trial Bundle 3 Part 1 at pages 228 – 242
[62] [1995] 2 AC 513

> "Where Parliament intends to impose a duty on a minister to bring legislation into force… it expressly states the time-limit within which such power is to be exercised... In my judgment **it would be most undesirable that, in such circumstances, the court should intervene in the legislative process by requiring an Act of Parliament to be brought into effect. That would be for the courts to tread dangerously close to the area over which Parliament enjoys exclusive jurisdiction, namely the making of legislation**. In the absence of clear statutory words imposing a clear statutory duty, in my judgment the court should hesitate long before holding that such a provision as section 171(1) imposes a legally enforceable statutory duty on the Secretary of State."[63] (bold emphasis mine)

[165] GLA has also complained about the lack of fees for copies on the register but there is no evidence before this court that GLA sought information on the fees payable for copies of documents and was refused by PADA or was told that none existed. In fact, the evidence before the court is that an official from PADA provided GLA with information via email when requested, without any clear indication that fees were in fact paid prior to the provision of the documentation. GLA has not proven or shown how Parliament's intention or PADA's proper functioning has been undermined.

[166] I am equally mindful of this court's supervisory jurisdiction in judicial review proceedings. As no unlawfulness has been satisfactorily proven on this issue, I decline to grant GLA's request for a declaration that the lack of regulations governing the EIA process as contemplated by section 22(4) of the Act seriously and significantly hampers PADA's discharge of its public duties under the Act and consequently undermines Parliament's intention and legitimate public expectations to be consulted on Third Schedule projects as embodied by the Act.

[63] [1995] 2 AC 513 at 550 E-H

WHETHER PADA WAS REQUIRED TO CONDUCT PUBLIC CONSULTATIONS;

[167] GLA's posture on this issue follows from its argument on the lack of regulations governing the Act. GLA argues that in the absence of regulations, public consultations ought to have been conducted in conformity with the Gunning principles espoused in **R v The London Borough of Brent ex parte Gunning and others**[64] -

> "First, that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third, that adequate time must be given for consideration and response, and finally, fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals."[65]

[168] GLA also advances that even where consultation is not legally required, if it is embarked upon, it must be carried out properly[66]. Such a requirement, GLA states, is consistent with Grenada's obligation under Article 7 (1) of the Escazu Agreement ratified by Grenada on 20th March 2023. GLA quotes **Fishermen and Friends of the Sea v Environmental Management Authority**[67] to make the point that "public consultation and involvement in decisions on environmental issues are matters of high importance in a democracy."[68]

[169] GLA also argues that while evidence has been provided by PADA on some public consultations carried out with the Hartman and Levera projects, there is no evidence of public consultation being undertaken by PADA with respect to the Range project. GLA submits that public consultations were carried out by Range itself, with input from PADA. These consultations, GLA contends, are not consistent with the confines of the law. GLA further complains that

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[64] [1985] 84 LGR 168
[65] Ibid
[66] R v North and East Devon Health Authority ex parte Coughlan [2001] QB 213 at 108
[67] [2005] UKPC 32
[68] Ibid at 28

PADA's evidence of consultations through single short surveys and virtual and in person public meetings were insufficient, making the decisions procedurally unfair, and deprived the public of the opportunity to make informed representations to PADA.

PADA's posture on the consultations issue

[170] PADA in response submits that the Act does not prescribe mandatory requirements for public consultation. Further, GLA has not provided evidence to show that PADA had an established procedure of consultation prior to the grant of approvals in this case. PADA references **R (Harrow Community Support Ltd) v Secretary of State for Defence**[69], where the court ruled –

> "A duty to consult does not arise in all circumstances. If this were so, the business of government would grind to a halt. There are four main circumstances where consultation will be, or may be, required. **First, where there is a statutory duty to consult. Second, where there has been a promise to consult. Third, where there has been an established practice of consultation. Fourth, where, in exceptional cases, a failure to consult would lead to conspicuous unfairness**. Absent these factors there will no obligation to consult…The general law will be slow to require a public body to engage in consultation if there is no obligation or promise so to consult."[70]

[171] PADA's further view is that where a voluntary process of public consultation commenced after permission is engaged, this action does not retroactively render the permission granted unlawful. PADA also contends that GLA's complaint about insufficient information is startling, considering GLA's ability to produce comprehensive reports, which contained critical assessments of the projects, EIAs and application plans. PADA therefore refutes GLA's assertions that improper consultations were held and that GLA was prevented

[69] [2012] EWHC 1921 (Admin)
[70] Ibid at 29 - 30

from making representations to PADA because of improper or inadequate consultations.

[172] PADA also relied on **R v North and East Devon Health Authority, ex parte Coughlan**[71], where Lord Woolf MR elucidated –

> "It has to be remembered that consultation is not litigation: the consulting authority is not required to publicise every submission it receives or (absent some statutory obligation) to disclose all its advice. **Its obligation is to let those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response**. The obligation, although it may be quite onerous, goes no further than this."[72] (bold emphasis mine)

Range's take on the consultation issue

[173] Range concurs that there is no statutory duty imposed on PADA to engage in public consultations. Range also points out that there have been other consultative engagements driven by Range itself with involvement from PADA's principals and members of the public. Range avers that adequate consultations did take place, highlighting that a significant degree of the public consultations occurred during the preparation of the EIA, as the EIA itself references that 185 households in the area were surveyed. Range also refers to evidence that GLA's principals were invited to townhall meetings and that Range has held several communications with GLA.

Heng Sheng's views on the consultation issue

[174] Heng Sheng references GLA concession that there were 3 consultations conducted by PADA in relation to the Levera development in July 2020, September 2020 and April 2021. Heng Sheng also accepts that there is

[71] [2001] QB 213
[72] Ibid at 112

no general common law duty to consult. Heng Sheng presents **Rainbow Insurance Co Ltd v Financial Services Commission of Mauritius**[73] as authority for the view that it is only if the court is satisfied that there is a duty to consult, then it will go on to examine the extent of that duty.

[175] Heng Sheng cautioned that the Gunning principles ought not to be read as statute and submits that **R (Moseley) v London Borough of Haringey**[74] stresses that fairness must be linked to the purpose of consultation. Heng Sheng also submits that the conditions imposed by PADA in its approval, resulted from issues raised during the consultation process, which PADA considered and implemented. Heng Sheng concludes that GLA's allegations on this point for the Levera development ought to fail.

Hartman's arguments on the consultation issue

[176] Hartman characterises GLA's suggestion that consultations for the Hartman development only occurred in November 2020 after approval as misconceived. Hartman claims that consultations were held as early as 2011. Hartman relies on **R (on the application of Stamford Chamber of Trade and Commerce) v Secretary of State for Communities and Local Government**[75] to make the point that a duty of consultation should not be imposed by implication.

My thoughts on the consultation issue

[177] In my view, accepting that there is no current mandatory statutory duty on PADA to conduct public consultations under the Act, and in the absence of promulgated regulations, PADA was under no statutory duty to conduct public consultations. However, using a broad and purposive interpretation of the Act, strength can be found in GLA's argument that rules of fairness will require that if public consultations are embarked upon, they should be carried out properly and thoroughly.

[73] [2015] UKPC 15
[74] [2014] UKSC 56 at 23
[75] [2009] EWHC 719 (Admin)

[178] However, GLA's insistence that the public consultations must conform to the principles as outlined in **Gunning** or the Escazu Agreement must be considered with caution. The principal objection may be that such an approach may impose a higher standard on PADA than that which is currently mandated or contemplated by either statutory or common law. The guidance in Gunning and/or the Escazu Agreement are just that – guidance, and not a prescriptive statute delineating the conduct of PADA's business. It must be remembered that one of the overall objects of the planning process is transparency through adequate engagement, and this is the standard that ought to apply in the absence of specific statutory criteria.

[179] As stressed in **The Landings Proprietors Unit Plan No. 2 of 2007 v The Development Control Authority**[76] **-**

> "… the common law duty to consult arises in only four main circumstances…**where, in exceptional circumstances, a failure to consult would lead to conspicuous unfairness. This fourth category, which it must be underscored is exceptional, has been further elucidated in the case law as meaning 'unfairness amounting to an abuse of power… [it being] illogical or immoral or both for a public authority to act with conspicuous unfairness and in that sense abuse of power."**[77] (bold emphasis mine)

[180] The rationale for this approach was comprehensively outlined in **R (on the application of Plantagenet Alliance Ltd) v Secretary of State for Justice and others**[78], where it was stated –

> "…The common law recognises a duty to consult, but only in certain circumstances. The following general principles can be derived from the authorities:
>
> (1) …
>
> (2) …

[76] SLUHCVAP2019/0019
[77] Ibid at 68
[78] [2014] EWHC 1662 (Admin)

(3)…

(4) **A duty to consult… in relation to measures which may adversely affect an identified interest group or sector of society, is not open-ended. The duty must have defined limits which hold good for all such measures.**

(5) **The common law will not require consultation as a condition of the exercise of a statutory function where a duty to consult would require a specificity which the courts cannot furnish without assuming the role of a legislator.**

(6) **The courts should not add a burden of consultation which the democratically elected body decided not to impose.**

(7) **The common law will, however, supply the omissions of the legislature by importing common law principles of fairness, good faith and consultation where it is necessary to do so**.

(8) …

(9) **The doctrine of legitimate expectation does not embrace expectations arising (merely) from the scale or context of particular decisions, since otherwise the duty of consultation would be entirely open-ended and no public authority could tell with any confidence in which circumstances a duty of consultation was to be cast upon them.**"[79] (bold emphasis mine)

[181] From the evidence before this court, though the consultative process may have been contemplated by regulations, such regulations have not been promulgated. PADA was therefore not under a statutory duty to embark on public consultations in a specified manner. Further, GLA has led no evidence of prior promises or representations by PADA that would ground either a procedural or substantive legitimate expectation of consultation, or pointed to an established practice by PADA in this regard.

[182] Considering the case law as outlined above, and the circumstances of the case with respect to the individual projects, PADA's rejoinder that GLA

[79] [2014] EWHC 1662 (Admin) at 97

received sufficient information to adequately allow it to express an informed view cannot be faulted. PADA provided evidence on the consultation processes which occurred. These consultations involved engaging both the public and governmental stakeholders[80]. Evidence has also been provided of Range's discussions with GAEA Conservation Network and Dr. Jody Daniel[81], and of emails from GLA to governmental agencies[82] which emails received acknowledgements and responses.

[183] The manner and form of public consultations not being mandated by law, PADA was well within its right to conduct the process voluntarily if it saw fit, in the mode that it saw fit and within the confines of procedural fairness. GLA's complaint about the timeline of consultations, the perceived inadequacy of virtual and in person town hall and other meetings and newspaper notices do not take matters much further since it is clearly the case that GLA was informed and provided with information to make complaints and representations about the projects to PADA.

[184] As stated in **R (on the application of Greenpeace Ltd) v Secretary of State for Trade and Industry**[83], a conclusion that a consultation exercise was unlawful on the ground of unfairness will be based upon a finding by the court, not merely that something went wrong, but that something went "clearly and radically" wrong[84]. Sullivan J reasoned that –

> "A consultation exercise which is flawed in one or even in a manner of respects, is not necessarily so procedurally unfair as to be unlawful. With the benefit of hindsight it will almost invariably be possible to suggest ways in which a consultation exercise might have been improved upon. That is most emphatically not the test. **It must also be recognised that a decision-maker will usually have a broad**

[80] See Trial Bundle 3, Part 1 at pages 217 – 222
[81] See Trial Bundle 3, Part 5 at pages 1187 – 1218, see also Trial Bundle 3, Part 7 at pages 1905 – 1908
[82] See Trial Bundle 3, Part 6 at page 1770
[83] [2007] EWHC 311
[84] Ibid at 63

discretion as to how a consultation exercise should be carried out…"[85] (bold emphasis mine)

[185] The facts of this case also show that GLA/GAEA were able to produce 3 comprehensive reports outlining their issues with the projects. On the totality of the circumstances, I am hard pressed to find that there was manifest unfairness in the consultations conducted, that there was any abuse of process by PADA or that something went clearly or radically wrong. I therefore find that the public consultations embarked upon were not unlawful or in breach of the principles of procedural or substantive fairness or constituted a failure on PADA's part that warrants judicial sanction or intervention.

WHETHER PADA WAS REQUIRED TO GIVE REASONS FOR ITS DECISION TO GRANT PLANNING PERMISSION TO THE 3 PROJECTS

[186] While accepting that there is no general obligation to give reasons at common law, GLA asserts in reliance on **R (Oakley) v South Cambridgeshire District Council**[86] and **R (CPRE Kent v Dover District Council and another)**[87] that in some circumstances a planning authority must give reasons for granting planning permission. They equally maintain that the adequacy of these reasons ought to be judged according to the guidance provided in **South Bucks District Council v Porter**[88], as the reasons must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the important and controversial issues.

PADA's views on giving reasons for its decisions

[187] PADA accepts the proposition that while a planning authority is generally under no common law duty to give reasons for the grant of planning permission, a duty could arise in specific situations where fairness and

[85] [2007] EWHC 311 at 62
[86] [2017] 1 WLR 3765
[87] [2018] 1 WLR 108
[88] [2004] 1 WLR 1953

transparency demand it as outlined in **Oakley** and **Kent**. PADA asserts however that the Act only mandates that reasons be given to the applicant if permission is refused or given subject to conditions, and not to the world at large.

[188] PADA counters that if the criteria as established in the case law referenced by GLA is applied to this case, there is no substantial evidence of the widespread public opposition of the 9, 000 persons that signed the online public petition, as same was not exhibited. Equally, PADA submits that it is unclear how many signatories to the petition are resident in Grenada. While acknowledging that PADA's officers admitted that they had concerns about some of the documents submitted by the developers, but PADA argues that no evidence has been shown that PADA departed from the advice of the officers.

Heng Sheng's take on the reasons issue

[189] Heng Sheng submits that the only statutory obligation to give reasons is contained under section 23(2) of the Act, where there is a grant or refusal of approval to an applicant. Heng Sheng further suggests that the court should infer that any common law basis on which reasons should be given have been excluded on the doctrine of *unius est exclusion alterius*[89]*.* Heng Sheng references the particular circumstances as highlighted in **Oakley**[90] of widespread public controversy, departure from development plans, disagreement with the recommendations of planning officers, openness and fairness to objections. Heng Sheng argues that these features are not present in this case.

My thoughts on the reasons issue

[190] Section 23 (2) of the Act provides –

> " The Authority shall give the applicant notice in the prescribed form of its decision and, in the case of an application for permission to develop land, if the Authority decides to grant

[89] Latin term for – 'The expression of one thing is the exclusion of the other'
[90] [2017] 1 WLR 3765

permission subject to conditions or to refuse it; the notice shall state the reasons."

[191] As correctly stated by PADA and Heng Sheng, section 23 (2) of the Act clearly contemplates that PADA is only statutorily obligated to give reasons to the applicant for planning permission. There is no statutory duty imposed on PADA to give GLA or any other person, other than the applicant, any reason why PADA granted or refused planning permission. It also follows that PADA is not obligated to reveal to anyone other than the applicant, why it considered or did not consider any material placed before it to make a planning decision.

[192] Turning to the common law principles, both PADA and GLA relied on the cases of **Oakley** and **Kent** to make arguments on the issue of 'substantial public opposition'. This court also notes that a hyperlink to the petition was referenced in Mr. Joseph – Witzig's evidence[91]. Mr. Joseph – Witzig indicates that evidence of the petition was provided to PADA's Chairperson[92]. However, actual evidence of signatories to the petition was not presented before this court[93]. From the document disclosed by GLA, the only definitive material on the evidence is that as at 11th December, 2023 at 9:18 pm, there were allegedly 9, 164 signatures to the petition. Without cogent evidence of the actual signatories to this petition or further details surrounding that process, it is difficult to find that there was substantial public opposition to the planning permission granted by PADA.

[193] PADA accepts that its officers, Mr. Jeremiah, Mr. Frederick and Mr. Thompson mentioned deficiencies in some of the documents submitted by the developers. However, the evidence of these witnesses also indicated that these deficiencies were raised both internally within PADA and later shared with the developers as matters to be addressed for conditional and/or final approval. PADA is correct that, in contrast to the circumstances in **Oakley** and **Kent,** PADA did not go against the advice of its officers, since none of these officers

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[91] See Trial Bundle 2 at page 34, paragraph 47 of 1st Affidavit of Andre Joseph – Witzig
[92] See Trial Bundle 2 at page 35, paragraph 49 of 1st Affidavit of Andre Joseph – Witzig
[93] See Trial Bundle 3, Part 6 at pages 1732 – 1734

gave evidence that planning permission ought to be refused for any of the projects.

[194] One may argue that this conclusion should not be applicable to the Levera development, which only received approval in 2023, when this case was already initiated and actively being pursued. This does not alter the position though since I do not accept that the mere filing of this claim rises to the level of substantial public opposition without more. I also agree with PADA's submissions that no evidence has been shown that PADA departed from its own plans or established policies. In the circumstances, I find that there was no statutory or common law duty on PADA to provide reasons to GLA or any other party, outside of the applicants, on the reasons for the approval of planning permission or the refusal to consider any documentation in this case.

WHETHER THE DECISIONS MADE BY PADA WITH RESPECT TO THE 3 PROJECTS WERE IMPUGNED BY ILLEGALITY, IRRATIONALITY, OR UNREASONABLENESS;

[195] Given the framing of GLA's claim and its pre – trial and post-trial submissions, different allegations of legal failings are made against PADA with respect to the 3 projects. The general issues relating to the public register, regulations, public consultations, and the perceived duty to give reasons have already been addressed. I must state at the outset that the submissions and material on these issues under this heading are quite extensive. To ensure completeness without repetition and prolixity, I will attempt to use the most compendious approach to resolving the questions.

[196] Each of the allegations against the projects will be assessed in turn against the learning in **Council for Civil Service Unions and Others v Minister for the Civil Service**[94]. The law regarding illegality, irrationality and procedural fairness are quite well known but for the sake of thoroughness, the test for the same is as dictated by Lord Diplock–

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[94] [1984] 3 ALL ER 935

"Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality," the second "irrationality" and the third "procedural impropriety." … **By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.** …**By "irrationality" I mean what can by now be succinctly referred to as " Wednesbury unreasonableness**" ... It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer... "Irrationality" by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review. **I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision**..."[95] (bold emphasis mine)

[197] The law with respect to unreasonableness, which features heavily in GLA's claim is as enunciated by Lord Greene MR in **Associate Provincial Picture Houses Ltd v Wednesbury Corporation**[96]

""It is clear that the local authority is entrusted by Parliament with the decision on a matter which the knowledge and experience of that authority can best be trusted to deal with. The subject-matter with which the condition deals is one relevant for its consideration. They have considered it and come to a decision upon it. It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable

[95] [1984] 3 ALL ER 935
[96] [1947] 2 ALL ER 680

authority could ever have come to it, then the courts can interfere. That, I think, is quite right; but to prove a case of that kind would require something overwhelming…it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body could have come to. It is not what the court considers unreasonable, a different thing altogether…. The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another. It is the local authority that are set in that position and, provided they act, as they have acted, within the four corners of their jurisdiction, this court, in my opinion, cannot interfere."[97]

[198] Courts will not quash a decision merely because they disagree with it or consider that it was founded on a grave error of judgment, as the court in matters of judicial review operates in a supervisory and not appellate capacity. Accordingly, the court will not lightly substitute its own view for that of the body charged by Parliament with exercising a discretion[98]. The court must consider the context of the case, as the standard of reasonableness varies with the subject matter of an act or decision[99].

[199] In this regard, the policy underpinning the decisions is not one that ought to concern the court. The review is not a merit based one, it is a review of the process by which the planning authority made its decision[100]. Importantly, and as correctly observed by PADA, *"[I]t is for the Authority to determine whether planning permission is to be granted even in circumstances where the permitted activity involves the risk or likelihood of foreseeable environmental loss".*[101]

[200] It is also apparent from the Act that PADA has been given a broad discretion to make decisions about the grant of planning permission, based on certain criteria. Where statutes give the discretion to make a decision, the court

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[97] [1947] 2 ALL ER 680 at 410
[98] Chief Constable of the North Wales Police v Evans [1982] 3 ALL ER 141 at 143
[99] R v Department for Education and Employment, ex parte Begbie [2000] 1 WLR 1115
[100] See Belize Alliance of Conservation Non-Governmental Organizations v The Department of the Environment and Belize Electric Company Limited [2004] UKPC 6
[101] See PADA's post-trial submissions filed on 20th October 2024

will only concern itself with whether the planning authority, in arriving at its decisions, followed the criteria set out in the statute. The court will also assess if the planning authority did so in a manner that was procedurally fair and arrived at a decision that is not so outrageous or defiant of logic that it could be said that no reasonable decision maker would have so done.[102] As found by Lord Bingham in **R v Secretary of State for the Home Department ex parte Hindley**[103]**,** the threshold of irrationality for the purposes of judicial review is a high one[104]. Lord Bingham reasoned,

> "This is because responsibility for making the relevant decision rests with another party and not with the court. It is not enough that [the court] might, if the responsibility for making the relevant decision rested with [it], make a decision different from the appointed decision-maker. To justify intervention by the court, the decision under challenge must fall outside the bounds of any decision open to a reasonable decision-maker."[105]

The question of EIAs

[201] Before embarking on an interrogation of each individual project, I observe GLA's continuous lament throughout the claim about the purported inadequacy of the EIAs presented by the Interested Parties to PADA. GLA's claim against PADA in its totality, when assessed closely, revolves around GLA's perception of inadequacy of the EIAs. These purported inadequacies, GLA claims, substantiate the allegations of irrationality or unreasonableness in PADA's decisions.

[202] The parties would do well to remember that where reasonableness is concerned, the guiding principle is not one of adequacy, but one that requires the court to assess the reasonableness of PADA's decision to grant or refuse

[102]See Belize Alliance of Conservation Non-Governmental Organizations v. The Department of the Environment and Belize Electric Company Limited [2004] UKPC 6 and R v Rochdale Metropolitan Borough Council, ex p Milne [2001] Env LR 406 at 433
[103] [1998] QB 751
[104] Ibid at 777
[105] Ibid

planning permission. We are at this juncture concerned about the EIAs and as such, the question would be whether it was reasonable for PADA to rely on the EIAs to arrive at its decisions. The exercise is therefore highly fact sensitive and does not occur in a vacuum.

[203] It is only where the court finds that the decision to rely or not to rely on a document is so unreasonable or in defiance of logic, that the court will step in under its administrative jurisdiction to assess the totality of the circumstances and if needed, rectify the matter. It goes without saying though that what is contained in the document is quite relevant to such discourse. If what is contained in the document is so inadequate that no reasonable decision maker would rely on the material to arrive at a decision, then it may be the case that the decision, if not otherwise supported, may be found to be unreasonable.

The law with respect to EIAs

[204] Something needs to be said at this juncture about the law on EIAs. Again, the submissions on this issue presented by all the parties and in particular, GLA and PADA are quite extensive. I have extracted a helpful conspectus on the issue from PADA's submissions presented on 20th October 2024 –

(1) "The adequacy of an EIA is to be judged against the requirements of its framing legislation. It to be treated as a nullity only if it is so deficient as to frustrate the legislative purpose for which an EIA was required"

(2) The test is set out in the case of **Prineas v Forestry Commission of New South Wales and Others**[106] where it was observed that –

> **"**I do not think the [statute]…imposes on a determining authority when preparing an environmental impact statement a standard of absolute perfection or a standard of compliance measured by no consideration other than whether it is possible

[106] (1983) 49 LGRA 402

in fact to carry out the investigation. I do not think the legislature directed determining authorities to ignore such matters as money, time, manpower… In my opinion, there must be imported into the statutory obligation a concept of reasonableness…Provided an environmental impact statement is comprehensive in its treatment of the subject matter, objective in its approach and meets the requirements that it alerts the decision maker and members of the public…to the effect of the activity on the environment and the consequences to the community inherent in the carrying out or not carrying out of the activity, it meets the standards imposed by the regulations. 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."

(3) It is observed that the Act sets out in section 2 the definition of an EIA as "… the process of collection, analysis, evaluation and review of information on the likely effects of a proposed development on the environment and the means to overcome adverse effects which enables the Authority to determine whether development permission should be granted and with what conditions."

(4) The foregoing must be read in conjunction with the prescriptions of section 3 which mandate the object and purpose of the Act. Read together with the definition of an EIA in section 2, it suggests that the purpose of the EIA is to outline "…**the relevant effects of the proposed development or the likely effects upon 'the physical environment within which human settlements are situated in Grenada' and on 'the quality of life of every person in Grenada'**. It is to gauge the effects of the development on 'the sustainable use of land in the interests of all the people of Grenada;' and the effect that the development will have on the 'the cultural heritage of Grenada, as it finds expression in the natural and the

built environment…" In doing so, a "broad and purposive approach" ought to be adopted.

(5) Section 22, addressed below, sets out the requirement for and the process by which an EIA is compiled. "… the purpose which an EIA is intended to serve is to bring the likely significant effects of a proposed development to the attention of the Planning and Development Authority and in particular, the Environmental Assessment Committee in order that the probable significant environmental consequences of a proposed development can be properly understood."

(6) Regulations are to be made by the relevant Minister to achieve these objects, but none have been promulgated. In the absence of regulations setting out minimum standards to be met by an EIA, it is for the planning authority to decide whether the EIA meets the requisites of the endeavor. The court will decide whether the planning authority acted properly in arriving at this conclusion. The court will conduct this assessment along the "Wednesbury" reasonable test principles.[107]

[205] As recounted in **Regina (Khatun and Others) v. Newham London Borough Council**[108] per Laws LJ –

> "… [W]here a statute conferring discretionary power provides no lexicon of the matters to be treated as relevant by the decision-maker, then it is for the decision-maker and not the court to conclude what is relevant subject only to Wednesbury review. By extension it gives authority also for a different but closely related proposition, namely that it is for the decision-maker and not the court, subject again to Wednesbury review, to decide upon the manner and intensity of inquiry to be undertaken into any relevant factor accepted or demonstrated as such."[109]

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107 See also Belize Alliance of Conservation Non-Governmental Organizations v The Department of the Environment and Belize Electric Company Limited [2004] UKPC 6

108 [2005] Q.B. 37

109 Ibid at 35

[206] It will be also helpful to recite PADA's statutory duties where an application for planning permission is made and the importance of an Environmental Impact Assessment to that application. Section 22 deals with PADA's statutory duties for Environmental Impact Assessments and reads –

> **"**(1) The Authority may require an Environmental Impact Assessment to be carried out in respect of any application for permission to develop land, including an application for approval in principle, if the proposed development could significantly affect the environment.
>
> (2) Unless the Authority for good cause otherwise determines, an Environmental Impact Assessment shall be carried out in respect of any application for development of a kind mentioned in the Third Schedule.
>
> (3) The Authority shall not grant permission for the development of land pursuant to an application to which this section applies, unless it has first taken the report on the Environmental Impact Assessment into account.
>
> (4) …
>
> (5) If the Authority notifies an applicant that an Environmental Impact Assessment is required, the Physical Planning Unit and any other public agency shall, if requested by the applicant, may consult with the applicant, to determine whether that agency has in its possession any information which may be relevant to the preparation of the Environmental Impact Assessment and, if it does, the agency may make any such information available to the applicant, on payment of a reasonable cost but the agency is not required to disclose confidential information to the applicant.
>
> (6) Where the Authority issues a notice under sub-section (1), it shall inform any public agency or department of Government having responsibility for issuing licences, permits, giving approvals, consents or any other document of authorization in connection with any matter affecting the development, such public agency or department of Government shall not grant a licence, permit, or give its approval, consent or issue any document of authorization, unless the Authority notifies the agency or department of Government that the notice was complied with and that the Authority granted permission for the proposed development.
>
> (7)…"

[207] Section 23 of the Act outlines PADA's statutory duties for determining applications and reads –

> "(1) Where the Authority receives an application under section 19, the Authority shall have regard to the approved physical plan for the area within which the land is situated, if any, and to any other material

considerations, and may grant permission to develop land with or without conditions as it thinks fit, or may refuse permission.

(2) …

(3) If after considering an application and any plans submitted with it, the Authority considers it necessary so to do, the Authority may return the plans to the applicant for amendment and, the applicant shall return the amended plan within the time specified by the Authority and, the running of time for conveying its decision to the applicant is suspended for the purposes of section 24, until the amended plan is resubmitted by the applicant to the Authority.

(4) If the Authority grants permission with conditions to any person to undertake any development, the Authority may, if it considers it necessary, enter into any arrangement or agreement with the person in order to give effect to the conditions.

(5) The Authority may require any developer to provide a bond, or any other instrument of guarantee of performance, in such sum as the Authority considers necessary to give effect to any permission to undertake development.

(6) Notwithstanding subsections (3) and (4) and anything that may be done under them, the Authority may, at any time, revoke its permission to develop the land in question or any part thereof, without compensation, if any condition attached to the permission to develop the land is not complied with.

(7) The term "material considerations" in subsection (1) includes site assessment reports by the staff of the Physical Planning Unit, reports or studies covering the area of the proposed development, any prescribed planning or building standards, and where applicable, the environmental impact assessment report and any representations made by persons who may be affected by the proposed development."

Material considerations

[208] I observed that the concept of a 'material consideration' is as recited in section 23(7) of the Act. GLA asserts that PADA acted unlawfully by not taking certain material considerations into account, and alleges that if PADA had done so, it would have found various issues as pressing and refused to grant planning permission. GLA relies on **R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions**[110] to suggest that a

[110] [2003] 2 AC 295

decision maker is required to consider material or relevant considerations and that failure to do so is a public law error that can lead to the decision being quashed on judicial review.

[209] In this regard, GLA charges that its reviews of the EIAs for the 3 projects were material considerations but that same were not considered by PADA at all in its assessment of the EIAs and more generally on whether to grant permission. GLA challenges the evidence of PADA's witnesses, singling out GLA's Levera review, which was sent directly to PADA. GLA insists that this Levera review, was a material consideration in accordance with section 23(7) of the Act.

[210] The question to be asked is whether PADA was obliged to take the Levera review or any other review prepared and presented by GLA into account? Section 23 of the Act dictates what PADA is to consider when making its decisions and specifically defines a material consideration in section 23(7) of the Act. What is a material consideration has also been addressed and explained in case law. In **R v Somerset County Council ex parte Fewings**[111] it was observed that –

> ""First, those clearly (whether expressly or impliedly) identified by the statute as considerations to which regard must be had. Second, those clearly identified by the statute as considerations to which regard must not be had. Third, those to which the decision-maker may have regard if in his judgment and discretion he thinks it right to do so. There is, in short, a margin of appreciation within which the decision- maker may decide just what considerations should play a part in his reasoning process."[112]

[211] In **R (on the application of Transport Action Network Limited) v The Secretary of State for Transport**[113] per Holgate J, it was noted that –

[111] [1995] 3 ALL ER 20
[112] Ibid at 32
[113] [2021] EWHC 2095 (Admin)

"In R (Oxton Farm) v Harrogate Borough Council [2020] EWCA Civ 805 the Court of Appeal endorsed at the following summary of the legal principles:-

"In R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council [2020] PTSR 221 the Supreme Court endorsed the legal tests in Derbyshire Dales District Council [2010] 1 P & CR 19 and CREEDNZ Inc v Governor General [1981] 1 NZLR 172, 182 which must be satisfied where it is alleged that a decision-maker has failed to take into account a material consideration. It is insufficient for a claimant simply to say that the decision-maker did not take into account a legally relevant consideration. A legally relevant consideration is only something that is not irrelevant or immaterial, and therefore something which the decision-maker is empowered or entitled to take into account. **But a decision-maker does not fail to take relevant consideration into account unless he was under an obligation to do so.** Accordingly, for this type of allegation it is necessary for a claimant to show that the decision-maker was expressly or impliedly required by the legislation (or by a policy which had to be applied) to take the particular consideration into account, or whether on the facts of the case, the matter was so "obviously material", that it was irrational not to have taken it into account."[114] (bold emphasis mine)

[212] In **The Landings Proprietors Unit Plan No 2 of 2007 v Development Control Authority**[115], our Court Appeal opined that –

"There are three categories of considerations (i) those clearly identified by statute as considerations to which regard must be had, (ii) those clearly identified by statute as considerations to which regard must not be had and (iii) those to which regard may be had in the discretion of the decision-maker. This third category can be divided into two sub-categories: (1) considerations to which the decision-maker makes no

[114] [2021] EWHC 2095 (Admin) at 74
[115] SLUHCVAP2019/0019

reference and (2) considerations which are adverted to by the decision-maker but given no weight. Where the decision-maker makes no reference to a consideration which falls into the third category his decision is not unlawful unless the consideration is obviously material in accordance with the Wednesbury test of irrationality. Likewise, where such a consideration is referred to by the decision-maker but he accords no weight to it, his decision is not unlawful unless no reasonable decision-maker could have done so."[116]

[213] If one looks at the matter from the standpoint of material that is "obviously material", I am hard pressed to see how, without more, a review of the EIA by persons, whether self-asserted expert or not, amounts to information that must be obviously considered by the PADA. It may be material that the PADA considers in arriving at its decision and attach such weight at it sees fit. But it cannot be material, without more, that the PADA is duty bound to consider and with which it must concur. If it were otherwise, the process would condescend into a discourse about meeting the standards for development as dictated by experts like GLA, and not as parliament dictated, decisions made by the persons employed at the PADA.

[214] More tellingly in this case is the fact that there is no express statutory obligation on the part of PADA to consider the expert reviews conducted by GLA. Now, PADA has said that it did consider the reviews, but ultimately it must be PADA's decision whether to adopt those views or to take its own view on the other material before it.

[215] It also appears from GLA's arguments that it hinges part of its claim on the requirement to consider "any representations made by persons who may be affected by the proposed development." The entire society may be said to be affected by the development in one way or another, but as PADA rightly points out, to say that one has standing to bring a claim of this sort is quite separate and apart from saying that one is a person affected by the proposed project. In the former sense, anyone who has a sufficient interest in the conservation of the

[116] SLUHCVAP2019/0019 at 174

environment may be well placed to seek a judicial review of the propriety of planning actions. That may not always be synonymous with cases of persons affected by the development.

[216] The foregoing approach makes sense to me since, if it were otherwise, I could see how, for instance, the process of decision making by the PADA could become an endless discourse and debate with competing expertise. The overall object of the planning laws is to set a mechanism in place that ensures that the policy of government to develop lands is executed in a purposeful and sustainable manner, taking as many factors into consideration as possible. The task is not one to find an arithmetical solution to every possible concern that may attend the process.

[217] The planning process is not an academic excursion of drawing straws on what ought to be done or a debate of perfection. It is also not a discourse in overcoming hurdles identified by experts. Rather, the object of the planning law is to find a pragmatic, balanced and common-sense approach to development in a manner that preserves the environment as far as possible. It is for this reason that the statute identifies several material considerations to be considered by the PDA in arriving at its decisions. The opinions of experts who are not appointed as experts in the statutory sense or who cannot show that they are, as contemplated by the section "persons affected by the development", no matter how well intentioned their endeavors, is not part of the matters that PADA is obligated to consider in making its decisions.

[218] Even if PADA takes these opinions into account, nowhere is it stated or presumed that PADA is bound by these views. What the case law does indicate and rightly so, is that where PADA is duty bound to take certain factors into consideration or shows that it has so done, so long as the decision to which it arrives after doing so does not appear to be so outrageous that no reasonable authority would come to such a decision, then the PADA is deemed to have acted properly.

THE LEVERA PROJECT

[219] GLA alleges that PADA's decisions between June 2020 to 15th June 2023 to grant permission for Levera to commence development for

(1) temporary workers housing,

(2) the golf course and

(3) the entire Levera development

were unlawful and irrational due to GLA's view that PADA granted permission without the benefit of objective, adequate and comprehensive EIAs[117]. GLA also charges that PADA acted unlawfully by failing to consider relevant or material considerations[118], namely the EIA review of the project done by GLA.

Temporary worker's housing

[220] With respect to the temporary worker's housing, GLA asserts that PADA placed reliance on outdated EIAs submitted for a different project. Those outdated reports, GLA claims, were also compiled before the Levera site was assigned a "Ramsar designation". In addressing this complaint, PADA's unchallenged evidence is that they had previously received EIAs and reports for the development area, which were considered along with the plans proposed by the developers. PADA's evidence is also that site inspections were conducted, which aided PADA in concluding that there were no serious environmental concerns about the site proposed by Heng Sheng for the temporary living quarters.

[221] Considering the aforestated principles, I am hard pressed to see how PADA's decision on the temporary worker's quarters was flawed when tested against the principles in **CCSU.** The approach adopted and explained by PADA clearly considered several prior submitted EIAs of the same area, and it was

[117] GLA alleges contravention of sections 22(2), 22(3) and Schedule 3(1), 3(6), 3(11), 3(21) and 3(22) of the Act.

[118] GLA alleges contravention of section 23(1) of the Act.

determined that the proposed development of the temporary worker's housing was for all intents and purposes not particularly significant.

[222] Upon review of the prior EIAs and other reports which PADA indicated were considered, including those done in 1988[119] and 2002[120], there was a plethora of material covering several environmental issues such as sea turtle conservation,[121] geological investigations[122], and mangrove conservation[123]. That GLA disagrees with PADA on the merits of those assessments does not demonstrate, in my view, that PADA acted unreasonably or unlawfully, as the law does not preclude PADA from considering previously submitted EIAs when making a decision.

[223] GLA charges that PADA ought to have asked for updated assessments, which one may very well commend as a prudent course of proceeding. The test, however, is whether the steps taken by PADA were lawful, procedural fairly and reasonable. That GLA or this court would have adopted another course or in our view, it would have been *more prudent* to adopt another course is to adopt a posture that would place this court and GLA in the chair of the decision maker. As stated in **R (on the application of Suffolk Energy Action Solutions SPV Ltd) v Secretary of State for Energy Security and Net Zero**[124]

> "**The manner and intensity of any inquiry into any matter which the Authority considers to be material is a matter for them, subject only to the supervisory jurisdiction of the court. So too is the weight they decide to attach to any particular factor. Any decision made by the Authority about whether they have sufficient information on which to make a recommendation, or to make a decision to grant or refuse development consent (as the case may**

[119] See Trial Bundle 3 Part 25 at pages 2957 – 2959, Trial Bundle 3 Part 26 at pages 2960 – 2968, 3027 – 3064
[120] See Trial Bundle 3 Part 25 at pages 2838 – 2948,2953 – 2956
[121] See report of Ocean Spirits Inc at Trial Bundle 3 Part 26 at pages 2970 – 2980 and pages 2997 – 3020
[122] See reports at Trial Bundle 3 Part 26 at pages 2982 –2996
[123] See Trial Bundle 3 Part 25 at pages 3022 – 3026
[124] [2024] EWCA Civ 277

be), is only open to challenge on the basis that no reasonable authority could have been satisfied on the basis of the enquiries made that it possessed the information necessary for the making of the decision."[125] **(**bold emphasis mine)

[224] It is important to remember that the Act does not specify the time frame within which an EIA can be considered outdated or irrelevant. Planning bodies may well be advised to have the most current and up to date material available to them when they are deliberating on whether to grant permission for a proposed development. This is since, in an appropriate case, the material may be so outdated or irrelevant due to the passage to time, intervening changes to the law or to the environment, that it could quite possibly be argued or proven that the assessments were inadequate or incomplete.

[225] Considering the factual context of prior assessments and minimal work proposed to be done on the site, and in the absence of prescriptions in the Act regarding the time frame within which an assessment ought to be conducted and can be relied on, the test must, again, be whether the planning authority acted in a reasonable manner. It is also noteworthy that the notice of approval was given with several conditions and explicitly stated that an EIA had to be submitted for review and approval by the authority. The notice of approval also recited that Heng Sheng must address specifically outlined environmental and social impacts of the project proposal to obtain final development approval[126].

[226] Secondly and more importantly, there is nothing presented to this court by GLA that suggests that the previous EIAs relied upon by PADA were so inadequate that a reasonable planning authority would not have given permission to construct the temporary workers quarters or do any form of development. The lamentation that the temporary worker's quarters were also part of a larger project must also be seen through the same lens. The statute does not instruct PADA to assess whether the application is a component of a larger project. Rather, the statute dictates when an EIA is required and how it

[125] [2024] EWCA Civ 277 at 21

[126] See Trial Bundle 3, Part 8 at pages 2079 – 2085

ought to be considered in the planning process. There was therefore nothing preventing PADA from assessing the application for approval of the temporary workers quarters separate and apart from the entire project as it did. As PADA rightly points out, when a developer asks for part of a project to be approved, it does so with the knowledge that the entire project may not be approved[127].

Golf Course

[227] On the issue of the decision to grant permission for the Golf Course, GLA argues that this decision was unlawful because PADA did not have the benefit of a separate EIA for same. In the absence of regulations on this issue, I do not agree that a separate EIA was required, as the golf course does not fall within one of the scope of projects where an EIA is mandatory under Schedule III of the Act.

[228] If PADA did not consider that a separate EIA was necessary, PADA acted well within its remit to determine any application based on a singular EIA or multiple EIAs, once those EIAs are comprehensive and informative on the environmental impact of the project in the **Prineas** sense and meet the objectives of the Act.

[229] PADA's response to this charge is that the golf course is not the sort of development for which the Act mandates that an EIA be conducted with which I am agreed. However, PADA also indicates that the golf course was considered as part of the larger project in respect of which a comprehensive EIA was completed. GLA has not shown how this was a violation of the statute or improper in the Wednesbury sense. Later in this judgment I will explore, under the Levera project in its entirety, whether PADA acted properly in granting permission for the golf course. For all the reasons that I have stated above, I disagree that PADA was required to consider the golf course through a separate EIA as alleged.

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[127] See paragraph 41.2 of PADA's pre – trial submissions filed on 20th September 2024 on page 43

Entire Levera Development

[230] On this issue, GLA's complaints are voluminous. In summary, GLA charges that its Levera Review dated 10th February 2023[128] and GAEA's Levera Review[129] highlighted several deficiencies in the Levera EIA. GLA assails the EIA as being contrary to best practice, failing to address legislative and other legal requirements[130], lacking assessments on the environment where hydrology, turtle nesting, fishing and archeology are concerned, and lacking in mitigation measures on adverse environmental effects. GLA also challenged the method and type of data collection done to inform the EIA, and in some instances, uses some of its own research, and that of GAEA, to highlight the purported deficiencies in the EIA.

[231] These charges are where I find that GLA and GAEA's Levera reviews depart from factual observations on the environmental effects of the development itself and teeters treacherously on being opinion evidence on the EIA submitted. As I have stated earlier, GLA's opinion on the adequacy of the EIA through its own opinions is only of limited relevance in the sense I have above stated.

[232] For these present purposes, I repeat that these comments made in the reviews will only be considered if they aid the court's interrogation of the matters in the sense explained previously. Where for instance, the EIAs are found in the **Prineas** sense to be sufficiently comprehensive and to meet the objectives of informing PADA on the potential impact on the environment by the development proposed by Heng Sheng, it may be hardly appropriate for this court to advert to the review reports.

[233] I am mindful in all this that this judicial review process does not condescend into a reassessment of the application process that was before PADA, with the court substituting its own forensic critique of what PADA did or

[128] See Trial Bundle 3, Part 1 at pages 125 – 144
[129] See Trial Bundle 3, Part 1 at pages 81 – 95
[130] GLA charges that the EIAs made no reference to the Integrated Coastal Zone Management (ICZM) Act of 2019, The Museum Act of 2017, Other Wildlife (Protection) Act of 1957, the revised Abatement of Litter Act, National Land Policy and also the National Water Policy.

did not do. To repeat, so long as what PADA did complied with its statutory mandate and was not so outrageous to be in defiance of logic, this court is duty bound to find in favor of its decisions, even if it would have itself given another decision on the same material.

[234] There were 2 EIAs submitted to PADA in 2021. The EIA dated March 2021 on the entire project was conducted by Niles and Associates[131] and spans 107 pages. In reviewing this EIA, I have found explanations on the type of soil and topography on the site, an extensive summary of the marine life and mangrove ecosystem at the site at the Levera pond and Levera beach. There is also information on the social and economic environment, summaries on the public consultations conducted and the concerns and recommendations made.

[235] The scope of the project was also outlined, showing the initially proposed project and the reduction in size of the new proposal, identification and assessments on the overall project's impact on the environment and mitigation measures to address those impacts. An environmental management plan was also outlined, addressing the activities of concern, the mitigation measures and who was responsible for performing these measures during the developmental process.

[236] There was also the EIA on the proposed construction of the jetty dated 20th January 2021,[132] which spans 23 pages. I note that an EIA for the jetty was mandatory, falling within a Schedule III type of development under the Act. This EIA outlined the legislative background for this aspect of the project, described the marine and ecological environment, beach dynamics, tides and currents, and coral reefs and species. It also outlined potential environmental impacts and gave recommendations for mitigation of the adverse effects identified.

[237] GLA complains that the Levera EIAs also failed to understand potential issues, propose alternatives and enhance public participation. These are GLA's opinions and not factual observations. As aforestated, PADA's actions do not

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[131] See Trial Bundle 3, Part 26 at pages 3065 – 3172
[132] See Trial Bundle 3, Part 26 at pages 3173 – 3196

automatically become irrational or unreasonable, simply because GLA's witnesses would have implemented different mitigation measures or considered additional information or required different types of assessments of the environment. Failing to mention or integrate legislation which GLA surmises is relevant is not a fatal error in the EIAs. PADA as the decision-making body determines the relevancy or irrelevancy of the information to be reviewed in accordance with the Act.

[238] PADA's evidence is that it considered, in addition to GLA's own reviews, (which GLA has not challenged), the reports of its own members of staff who deposed to concerns about the project, including the EIAs, and themselves made recommendations and proposed mitigative measures, after examining the documents submitted. These are the actions of prudent planning authorities. PADA has also disclosed to this court that, in addition to the EIAs, there were other documents on which it relied, such as the '*Wharf Planning and Construction Scheme*' dated 30th December 2020[133] and the '*Jetty Plan Feasibility Study Report'* dated October 2021[134].

[239] GLA also refers to PADA's indication to Heng Sheng, after approval was granted, that a separate EIA ought to be produced for a desalination plant. GLA asserts that this shows the major failings of the entire Levera EIA and brings the entire approval for development into question. GLA contends that this satisfies the test of Wednesday unreasonableness, as any rational planning authority would immediately recognize that a mega tourism project, complete with a golf course, could not commence or survive, without adequate sources of water.

[240] Respectfully, this submission is logically and legislatively unsound. It must first be noted that a desalination plant is a Schedule III development, which requires an EIA under the Act. If PADA felt that the issue of desalination was not adequately or comprehensively addressed in the overall project EIA, PADA's

133 See Trial Bundle 3, Part 12 at pages 2178 – 2213
134 See Trial Bundle 3, Part 12 at page 2232 – 2275

request for further documentation or a separate EIA to consider the application falls squarely within its remit under section 21(1) of the Act, which recites that –

> "In addition to the information required when submitting an application, the Authority may, request in writing that an applicant provide further information which may be necessary to determine the application."

[241] I must say a word again about GLA's approach to this entire affair. As can be seen from the foregoing discourse, GLA entered into almost forensic polemics with PADA and the Interested Parties on the merits of the EIAs and their adequacy throughout this entire claim. Counsels are reminded that these sorts of proceedings are not excursions into the perfection or failings of the planning process.

[242] What would be useful on judicial review exercises regarding planning permission is a succinct description of the project, a concise description of the material that the planning authority considered in arriving at its decisions and a short description of any procedural or substantive legal missteps that may have bedeviled the exercise. Any alternative approach might in an appropriate case be described as an abusive utilization of the court's supervisory jurisdiction to criticize every single aspect of a document or the process adopted with respect to the planning decision making.

[243] It must also be remembered that while an EIA is an integral part of consideration by PADA when determining the environmental effect of a project, it is not the only consideration. Furthermore, one must appreciate that it is unrealistic to expect that an EIA will contain information on every conceivable matter affecting the environment. This does not however mean that PADA is permitted to act with wanton disregard of relevant information, as section 22(7) of the Act outlines what material considerations are for PADA's assessment purposes.

[244] This brings me to the only portion of GLA's complaint with respect to the Levera development that I consider to be meritorious. I accept PADA's submission that the golf course is not a Schedule III project for which an EIA is

mandated. However, GLA's complaint that the EIA for the overall Levera project "…says little about the golf course and its impacts, and no reasonable authority could have considered it an adequate assessment of the potential impacts of the golf course in this sensitive location"[135] is also of concern to me.

[245] As stated in **Preston New Road Action Group (through Holliday) v Secretary of State for Communities and Local Government and others**[136],

> "..An equally robust principle is that an environmental statement is not expected to include more information than is reasonably required to assess the likely significant environmental effects of the development proposed, in the light of the current knowledge."[137]

[246] From the review of the disclosure, I find that the golf course was proposed in an environmentally sensitive area and holes were destined to be positioned on or near the beach. According to the re-design, this area was a known nesting area for endangered turtles and a popular public recreation area. The Niles EIA does little to mention any potential environmental impacts that may be occasioned by the placement of the golf course or recommend any mitigation on adverse environmental impact. This was striking, even when considering that the size of the golf course was reduced to a smaller footprint than was originally proposed.

[247] Upon review of the Levera EIAs and other reports disclosed to this court, the issue of potential environmental impact on the golf course has been found wanting. There are only scant mentions of the failed golf course project in the early 2000s[138], in the Levera Report of March 2021, and in reports from 1988[139]. There were equally other documents before PADA which raised concerns about the golf course aspect of the project[140]. Given that the prior

[135] See paragraph 135 of GLA's closing submissions filed on 31st October 2024
[136] [2018] EWCA Civ 9
[137] Ibid at 67
[138] See Trial Bundle 3, Part 26 At Page 3096, 3109, Trial Bundle 3, Part 25 At Page 2926
[139] See Trial Bundle 3, Part 26 At Page, 2987, 3042, 3046-3047, Trial Bundle 3, Part 25 At Pages 2878 – 2887
[140] See Trial Bundle 3, Part 25 At Page 2952

material mentioned the challenges with the golf course project proposed by the prior developer in the 2000s, which was later abandoned, the Levera EIA ought to have comprehensively addressed this issue and made recommendations for mitigation. In considering the totality of the circumstances and the documentation before PADA, a reasonable planning authority would have observed that the proposed golf course, even when reduced, required further scrutiny and investigation. The potential effects of the golf course on the environment have not been presented to this court in any material way. Strikingly, the EIA merely provides the proposed location for the golf course.[141]

[248] As the Levera project was designed and proposed in phases, the issue of the golf course does not impugn the entirety of the project, as it was considered and approved through a separate application. However, outside of the golf course, this court finds that PADA acted prudently and as a planning authority ought to have acted with respect to the Levera development. There is nothing in the circumstances that suggests that what PADA did was so unreasonable or in defiance of logic that no reasonable planning authority would have decided to grant planning permission for the temporary workers quarters or the entire Levera project. I will address the appropriate remedy for PADA's failings with the golf course later in this ruling.

THE LA SAGESSE PROJECT

[249] In its claim, GLA challenges PADA's 29th January 2020 decision to grant planning permission for the La Sagesse project on the grounds that it was irrational and unlawful because inter alia –

(1) PADA failed to protect the natural and cultural heritage of Grenada by allowing the development to hamper public rights of access to the beach, destroy vegetation and partially backfill the salt pond;
(2) A proper and comprehensive EIA assessment was not completed.

[250] GLA claims that Range's EIA was inadequate, and that no reasonable planning authority would have relied on it. GLA raises these challenges in Dr.

[141] See Trial Bundle 3, Part 26 At Page 3125, 3132

Daniel and Mr. Joseph – Witzig's evidence, and detailed these perceived shortcomings in GAEA's La Sagesse report[142]. Before examining GLA's challenges to Range's project through the EIAs, it seems to be quite a stretch to say that PADA failed in its duties by allowing the developer to destroy vegetation.

[251] Range's notice of approval in principle was granted on 28th February 2019 and was subject to several conditions which included the submission of an EIA. Final approval was thereafter granted, which also contained several conditions. PADA's evidence and that of Mr. Shehada on this issue is that after approval was granted some vegetation was destroyed in error by a subcontractor.

[252] PADA's evidence as recounted by Mr. Frederick and Mr. Jeremiah is that upon being notified of the breach, PADA immediately requested that the destruction stop. Such an order was well within PADA's statutory remit[143]. Mitigation measures were proposed and were in fact implemented by Range to address the error, through Range's replanting of vegetation in specified areas. This is not a case where PADA did nothing to stop the developer from its illegal action. On the contrary, PADA's unrefuted evidence is that it visited the site, observed the wrongdoing done and established and ensured that mitigation measures were imposed and enforced. These are the actions of an active and aware planning authority.

[253] GLA has also alleged that PADA allowed Range to backfill the salt pond illegally. However, I will attach no weight to these assertions, as there is no objective evidence proving that these assertions are anything other than GLA's opinion. Further, Mr. Shehada's evidence on this point was not challenged at trial.

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[142] See Trial Bundle 3, Part 1 at pages 9 – 17

[143] See section 31 of the Act.

[254] GLA also contends that Range's EIA was so inadequate that PADA's reliance on it to grant permission is Wednesbury unreasonable, and the decision ought to be quashed. It must be remembered that an EIA is not the only document which PADA is required to consider before granting permission. The court's review of Range's EIA dated June 2019[144], which spans 89 pages was found to be quite comprehensive in its assessment of the environmental considerations with respect to the naturally occurring fauna, the geology of the area, drainage concerns, social and economic considerations and constraints, and its predictions on environmental impacts. It also included mitigation measures and outlined recommendations for environmental monitoring and management throughout the totality of the project.

[255] The evidence also shows that PADA had other documentation to consider in addition to the EIA, such as Range's Concept Design[145], Mechanical Report[146], Structural Concept Design Report[147], Range Development Site Accommodation and Batching Plant Report[148], NAWASA Laboratory Test Reports[149], Project proposal for the La Sagesse Archaeology Project[150], and Quantitative Benthic Reconnaissance and Marine Study[151] among other studies.

[256] Minutes of meeting with PADA concerning Range's project were also disclosed, which showed PADA's consideration of the documentation submitted by Range for the project[152], reports from the Chief Forestry Officer to PADA[153] and EIAC minutes of meetings on Range's development.[154] I do not find that I agree with GLA that the EIA was so defective that no planning authority would rely on it or that it was unreasonable for PADA to rely on any of the aforesaid documents referred to above to inform whether permission should be granted.

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144 See Trial Bundle 3, Part 30 at Pages 3421 – 3510
145 See Trial Bundle 3, Part 4 At Pages 935 – 961
146 See Trial Bundle 3, Part 16 At Pages 2520 - 2577
147 See Trial Bundle 3, Part 16 At Pages 2578 – 2603
148 See Trial Bundle 3, Part 16 At Pages 2607 – 2622
149 See Trial Bundle 3, Part 6 At Pages 1319 – 1332
150 See Trial Bundle 3, Part 6 At Pages 1379 – 1394
151 See Trial Bundle 3, Part 6 At Pages 1802 – 1850, Trial Bundle 3, Part 7 At Pages 1851 – 1860
152 See Trial Bundle 3, Part 31 At Pages 3538 – 3542; 3575
153 See Trial Bundle 3, Part 31 At Pages 3572 – 3574
154 See Trial Bundle 3, Part 31 At Pages 3576 – 3578

[257] However, as with the Levera project, I do share some of GLA's concerns with respect to the EIA's apparent deficiencies with respect to the environmental concerns and challenges where the lagoon enhancement approval is concerned. The evidence is that the La Sagesse lagoon is a protected area, but the overall project EIA fails to treat with the lagoon in any comprehensive way by identifying any adverse environmental impacts and making recommendations for mitigation of these said effects.

[258] I do note that the issue of the lagoon featured heavily as an area of concern by PADA as noted in its conditional approval[155]. This is buttressed by the fact that PADA proposed several mitigation measures in relation to the lagoon in its approval. In PADA's evidence[156], reference is made to a separate EIA being submitted to PADA with respect to the enhancement of the lagoon. Ms. St. Louis' witness summary recites the date of this subsequent EIA as 23rd November 2020[157].

[259] From the minutes of the EIAC meeting held on 12th January 2021[158], reference is again made to an EIA for the lagoon. However, I have reviewed Range[159] and PADA's disclosures[160] and both disclosures only reference the EIA dated June 2019 for the La Sagesse development. It would therefore appear that this separate EIA for the lagoon enhancement was not disclosed for the court's review. GLA has complained about the lack of disclosure by PADA throughout the course of these proceedings, and if there was in fact a subsequent EIA done for the lagoon enhancement after the overall EIA conducted in 2019, this is a glaring failing by PADA[161].

[260] Without this separate EIA being disclosed for the court's review and commentary, I am left with the EIA dated June 2019 which does not

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155 See Trial Bundle 3, Part 4 at page 1070 – 1071
156 See Trial Bundle 2 – paragraph 20(ii)(d) of Affidavit of Anthony Jeremiah on page 103, Witness Summary of Aria St. Louis on page 111 and paragraph 43 of Witness Summary of Trevor Thompson on page 120
157 See Trial Bundle 2 – paragraph 6(v) of Witness Summary of Aria St. Louis on page 111
158 See Trial Bundle 3, Part 31 at pages 3576 – 3578
159 See Trial Bundle 3, Part 31 at pages 3587 – 3591 outlining Range's list of documents
160 See Trial Bundle 3, Part 7 at pages 2019 – 2026 outlining PADA's list of documents
161 See paragraph 1(ii) of the Order dated 18th July 2023, which ordered inter alia specific disclosure of all the environmental impact assessments for the said developments.

comprehensively address the environmental impacts of the lagoon. I do note the plans for lagoon enhancement[162], *'Proposal for Lagoon Enhancement'* Report dated 21st July 2020[163] and the '*Lagoon Enhancement Assessment*' dated 16th September 2020[164] were in fact disclosed, but I am constrained to agree with GLA about the lack of qualitative information on the lagoon's environmental impact and mitigation measures within these documents.

[261] Had the separate EIA been disclosed by PADA, my findings on the lagoon may have been different, but in the absence of disclosure, I cannot speculate that this separate EIA was comprehensive in the **Prineas** sense by outlining the environmental impact of the lagoon's development or made recommendations on mitigating any adverse impacts attendant on the proposed developments of the lagoon.

[262] Planning authorities must ensure that they comply with their statutory and court ordered mandates on these matters to avoid these results. The appropriate remedy for this issue of the lagoon solely will be addressed in the remedies portion of this decision. As with the Levera development, outside of the sole issue of the lagoon, I find that PADA acted prudently and within its remit in granting planning permission for the project.

THE MT. HARTMAN PROJECT

[263] GLA challenges PADA's October 2019 decision to grant planning permission for the Mt. Hartman development. It is claimed that the decisions were unlawful and irrational because permission was granted prior to the completion of an updated EIA by JECO Caribbean in contravention of section 22(3) of the Act. Further, GLA claims that PADA did not consider all relevant matters as required by sections 3 and 22(3) of the Act, making the decision to grant permission unreasonable.

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[162] See Trial Bundle 3, Part 4 at pages 968 – 975
[163] See Trial Bundle 3, Part 25 at Pages 2821 – 2827
[164] See Trial Bundle 3, Part 7 at Pages 1875 – 1897

[264] GLA also asks the court to order that the application should be reconsidered and PADA should –

(1) Hold consultations with the Natural and Cultural Heritage Advisory Committee;

(2) Ensure that a comprehensive EIA process is done which addresses marine surveys and surveys of the Grenada dove population, wetland habitat and mangrove species;

(3) Ensure that mitigation measures of public access to the beach, limitation of negative effects of development on the Grenada dove sanctuary, the Mt. Hartman national park, the Woburn/ Clarkes Court Bay Marina are done; and

(4) Enforce recommendations made by the EIA for the Mt. Hartman project.

[265] The Mt. Hartman's applications to PADA for planning permission begin with an application for approval first made in September 2015 for development of 'Phase O' of the project. Phase O was comprised of building operations for a showroom, lobby and interpretative centre, lounge and bar, dining room, kitchen, office, villas and conference rooms and a swimming pool. This application was made by a previous developer in 2015. A master plan report dated 24th July 2015 accompanied that application.

[266] It is important to note that the current Act was not in force at the time of the application. An Environmental Impact Statement was thereafter submitted to PADA by JECO Caribbean dated 14th December 2015 and conditional approval in principle was granted to that developer on 1st December 2016. The application was resubmitted by the current developer, due to the lapse in time between approval and development. This application was approved by PADA in principle on 30th October 2019.

[267] GLA's plethora of challenges with the project are outlined in its Hartman EIA review[165], but its main grouse seems to be that in GLA's opinion, PADA

[165] See Trial Bundle 3, Part 1 at pages 152 – 187

ought not to have granted approval in October 2019 until it received a completed updated EIA. GLA cites section 22(3) of the Act as mandating that planning permission ought not to be granted, unless the EIA report had first been considered. Looking at the totality of the circumstances of Mt. Hartman's development, GLA's complaint here seems overly pedantic. This is not a case where PADA granted approval without consideration of an EIA, and as already established, reliance on a prior EIA is not unlawful under the Act.

[268] Even if not called an EIA by name, section 3 of the Act outlines what an EIA must contain, and the case law is clear that if the document is comprehensive in its treatment, it will satisfy the requirements of the law. As found by Lord Hoffman in **Berkeley v Secretary of State for the Environment**[166] -

> **"…An EIA by any other name will do as well. But it must in substance be an EIA…"**[167] (bold emphasis mine)

[269] The 2015 Master Plan report[168] outlines that it is a preliminary assessment of the proposed development and spans 39 pages. It addresses the proposed plans for Phase O of the project with respect to water, sewerage, electricity, gas, cooling and telecommunications and also outlines potential challenges in implementing Phase O. Proposals are outlined for electricity and transportation challenges highlighted in accessibility to roads in the area, and the report itself acknowledges that an EIA will be needed to make further determinations on the environmental impacts of the entire project.

[270] The Environmental Impact Statement dated 14th December 2015 as prepared by JECO Caribbean[169] spans 20 pages, and details the environmental impact of Phase O, in comparison to the 2015 Master Plan report. The EIS states that the report is with respect to Phase O of the project, which is preparatory to the full development plan, and details surveys that are to be conducted for the Grenada Dove sanctuary, improvements to site access,

[166] [2001] 2 A.C. 603
[167] Ibid at 617
[168] See Trial Bundle 3, Part 3 at pages 643 – 682
[169] See Trial Bundle 3, Part 3 at pages 691 – 711

geotechnical surveys for potable water, construction and operational waste management and utilities. The report describes the physical environment, details the dominant vegetation and associated fauna, and outlines the environmental impacts and mitigation measures for several matters such as drainage, terrestrial and marine plant life, noise regulation and transportation.

[271] Similar to the Levera development, PADA's evidence is that these aforementioned reports were some of previous reports submitted to PADA for the area. These reports, along with physical assessments and inspections by stakeholders, were considered when determining whether to grant approval in October 2019. It is also noteworthy that when PADA granted its approval in principle, it attached conditions to this approval, one such condition being the updating of the EIA for the project. Mr. Frederick's letter of 28th December 2020 to the Vice Chairman of the Hartman development outlined that an updated EIA was required, and that the EIA was to be submitted for review, along with the final application for the project[170].

[272] Also similar to the Levera development, the approval granted in 2019 was based on PADA's assessment of the preparatory works needed in Phase O towards the final project. As found in **Belize Alliance of Conservation Non-Governmental Organizations v The Department of the Environment (No 2)**[171], the grant of planning permission is not the final or last opportunity to exercise control over a project, as environmental control is recognized by the courts to be part of an iterative process. PADA's decision to grant conditional approval based on existing reports, while awaiting a more comprehensive report was a matter within the planning authority's judgment to make, and was not unlawful or, without more, unreasonable. PADA made this decision acknowledging that further information was required and that final approval would be considered after the submission of this documentation.

[273] It also does not follow that PADA's request for an updated EIA meant that the previous EIS or the Master Report previously submitted were deficient

[170] See Trial Bundle 3, Part 3 at page 714
[171] [2004] UKPC 6

in their findings, proposals and recommendations. The Act allows PADA as the decision maker to determine whether it had sufficient information, and if it found that it did not, it was well within its remit to request that information under section 21 (1) of the Act.

[274] It also does not follow that PADA had to await the updated EIA in order to grant approval. This reasoning was affirmed by the Privy Council in **Fishermen and Friends of the Sea v Environmental Management Authority and Others (Trinidad and Tobago)**[172]. In this case, Lord Carnwath SCJ reasoned –

> "The power to impose conditions on a CEC is in terms unlimited. There is no reason why it should not include an updated EIA. This does not in itself establish the inadequacy of the earlier EIA or of the other information on which the grant was based. Nor does the English case relied on lay down any general rule to that effect."[173]

I see no reason to depart from this learning, and I can find no unlawful or unreasonable act by the PADA by granting conditional approval to Mt. Hartman while awaiting an updated EIA.

[275] Turning to GLA's review of the Mt. Hartman project dated 20th February 2024[174], GLA challenges the EIS and updated EIA, outlining that statistics are inaccurate, data is insufficient, bird species are underestimated, and inadequate mitigation measures were identified to offset habitat loss. Upon my own review of these documents and the updated Mt. Hartman EIA[175], GLA again has undertaken a seemingly overly forensic review of the data presented to prove the inadequacy of the EIA. Most of the information contained in that report is the authors' opinions on the data presented and challenges the merits of PADA's decisions, based on GLA's own self asserted knowledge and assessments of the area.

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[172] [2018] UKPC 24
[173] Ibid at 49
[174] See Trial Bundle 3, Part 1 at pages 152 – 187
[175] See Trial Bundle 3, Part 5 at pages 1407 – 1428, Trial Bundle 3, Part 6 at pages 1429 – 1634

[276] The updated EIA prepared by JECO Caribbean Inc dated January 2021[176] is more comprehensive than the aforementioned Master plan report and EIS, spanning 226 pages. Upon review of this document, I find that substantively, it fits within the case law of being an EIA, outlining environmental impacts and proposing mitigation measures on issues such as air quality, plant life, natural resources, transportation, utilities and social and human implications of the development.

[277] The EIA also addresses marine life, contains a dove management plan and addresses water and desalination. I find that there was a comprehensive assessment on the issue of desalination, keeping in mind that Schedule III of the Act requires an EIA where water and desalination is concerned. Given the comprehensive assessment and treatment of water and desalination within the EIA, I find that PADA acted prudently and reasonably to grant planning permission in this regard.

[278] To further address GLA's complaints about PADA's decision on the entire project, disclosures by PADA of its minutes of the meeting of 22nd December 2021 also show that PADA transmitted the EIA report submitted by JECO Caribbean in January 2021 to the EIA Committee which was engaged to review it[177]. The EIA Committee wrote to PADA on 26th January 2022[178] outlining that a meeting was held on 26th January 2022 to deliberate on the report, and having reviewed it, the EIA Committee found that the report addressed issues previously raised by the EIA Committee, and found that the project would not adversely affect the natural environment, once the recommendations of the EIA Committee and the EIA report were followed. This correspondence also highlighted that any further development may require the receipt of an updated EIA, in keeping with new proposals.

[279] I have also read the extensive documentary evidence with respect to the Hartman development, such as the report by CEO for the Board on the Mt.

[176] See Trial Bundle 3, Part 3 at pages 715 – 904
[177] See Trial Bundle 3, Part 31 at 3545
[178] See Trial Bundle 3, Part 31 at 3562

Hartman development[179], minutes of meetings held with Hartman[180], site inspection reports done by representatives of Hartman and PADA EIA Committee[181], memorandums to PADA Board on requests for clearance of 2 lots of land[182], communications from PADA to Hartman on changes to the Master plan[183], minutes of PADA dealing with Hartman[184], and memorandums from the EIA Committee to PADA's Board on the Mt. Hartman development[185]. The totality of this material suggests, and I so find, that PADA acted within the confines of the law by considering the material before it and determining what decisions ought to be made for mitigation of environmental impacts and in compliance with the Act.

[280] GLA's complaint about lack of consultation with the National and Cultural Heritage Advisory Committee and lack of comprehensive EIAs are found to be without merit with respect to the Hartman project. Whether PADA determines that it wishes for itself or a developer to engage with any named body is a matter for PADA solely. The court's role is to assess the lawfulness and reasonableness of the planning authority's actions and not an assessment of the merits of decisions taken or not taken.

[281] It must be remembered that the court is not responsible for enforcing best practices or prescribing how PADA ought to oversee or govern development. The court's task is to ensure that the way the decision was made is proper, not with the merits of the decision itself. This court is not tasked with venturing into the office of policy makers to determine the policies with respect to development. It is not for this court to ensure that the developer puts measures in place to maintain public access to the beach, limit negative effects on the species and fauna in the development or enforce recommendations made by the EIA. These are matters for the planning authority to ensure are

179 See Trial Bundle 3, Part 31 at page 3525 – 3527
180 See Trial Bundle 3, Part 31 at page 3529
181 See Trial Bundle 3, Part 31 at page 3533 – 3536
182 See Trial Bundle 3, Part 31 at page 3537
183 See Trial Bundle 3, Part 31 at page 3528
184 See Trial Bundle 3, Part 31 at pages 3545 – 3552
185 See Trial Bundle 3, Part 31 at pages 3562 – 3563

properly done. I find no basis in law upon which to interfere with the Hartman project and thus I decline the reliefs sought by GLA in this regard.

WHETHER GLA HAS STANDING TO BRING THIS CLAIM;

[282] The issue of GLA's standing, or its lack thereof, is also ripe for determination at this stage. From inception, PADA and the Interested Parties have vigorously maintained that GLA lacks the requisite standing to bring this claim[186]. GLA has equally strenuously insisted that it has the requisite standing.

Range's take on standing

[283] Range attacked the issue of GLA's standing most frontally on three grounds:

(1) GLA did not exist when the decision was made to grant Range planning permission;
(2) GLA's members possess no personal interests in the developments as contemplated by rule 56.2 CPR; and
(3) GLA's incorporation to pursue litigation cannot give them standing which they did not previously possess.

Range claims that the interests of an incorporated association are distinct from the interests of persons in an unincorporated association[187] and that persons without an interest cannot join together and incorporate themselves and thereafter claim an interest[188].

GLA's views on standing

[284] GLA addressed Range's concerns by placing reliance on **Residents against Waste Site v Lancashire County Council**[189] and the recent Privy

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[186] Hartman indicated in its pre – trial and post-trial submissions that it will rely on the submissions of the other Interested Parties on this point. PADA also adopted this posture in its post-trial submissions. Heng Sheng indicated that it would rely on its submissions filed in the Court above on this point.
[187] Concerned Citizens of Canberra v Chief Planning Executive (Planning and Land Authority) [2014] ACTSC 165
[188] R v Secretary of State for the Environment ex parte Theatre Trust Co[1990] 1 ALL ER 754
[189] [2007] EWHC 2558

Council's ruling in **John Mussington and Another v Development Control Authority and others**[190], highlighting that GLA, through its members plainly have knowledge or concern for the subject matter and have a genuine interest in the fate of Grenada's flora, fauna and ecosystem. GLA also insists that the date of its incorporation is irrelevant, as Dr. Daniel and Mr. Joseph – Witzig have standing as individuals. GLA asserts that these individuals engaged with PADA and the Interested Parties prior to incorporation in their capacity as GLA's alter ego.

My take on the standing issue

[285] I note that the Court of Appeal's decision in **Mussington**[191] was relied on heavily by the Interested Parties in this court and in the subsequent appeal. In our apex court, Lord Boyd reasoned that our Court of Appeal in **Mussington** had taken too narrow an approach on the issue of standing and acknowledged that a broad interpretation is to be accorded -

> "The Eastern Caribbean CPR r 56.2 provides a very liberal and relaxed test of standing in judicial review proceedings: *Attorney General v Martinus Francois ("Francois")* Civil Appeal No. 37 of 2003 per Rawlins JA at para 152. **All that applicants require to show is that they have "sufficient interest" in the subject matter: CPR r 56.2(1). CPR r 56.2(2) contains a non – exhaustive list of persons who will be accorded standing.**"[192] **(bold emphasis mine)**

[286] Lord Boyd referenced dicta from Jamadar JA in **Dumas v Attorney General of Trinidad and Tobago**[193] quoting from **Walton and AXA General Insurance Ltd v HM Advocate**[194] that the permissive approach to standing in public interest litigation and the considerations for the court are as follows –

> (i) "Standing goes to jurisdiction and is to be determined in the legal and factual context of each case. It is a matter of judicial discretion.

[190] [2024] UKPC 3
[191] ANUHCVAP2020/0005
[192] [2024] UKPC 3 at 36
[193] TTHCVAP 2014/0P218
[194] [2011] UKSC 46

(ii) The merits of the challenge and the nature of the breach raised are important considerations.

(iii) The value in vindicating the rule of law (the principle of legality) is a significant consideration.

(iv) The importance of the issue raised.

(v) The public interest benefit in having the issue raised and determined.

(vi) The bona fides and competence of the applicant to raise the issues.

(vii) Whether the applicant is directly affected by, or has a genuine and serious interest and has demonstrated a credible engagement in relation to the issue raised.

(viii) The capacity of the applicant to effectively litigate the issues raised. Whether the action commenced is a reasonable and effective means by which the courts can determine the issues raised.

(x) The imperative to be vigilant so as to prevent an abuse of process by busybodies and frivolous and vexatious litigation.

(xi) Whether the issues raised are a general or specific grievance and whether there are other challengers who are more directly impacted by the decision challenged, or more competent to litigate it.

(xii) The availability and allocation of judicial resources."[195]

[287] More pointedly, Lord Boyd eloquently reasoned that –

> "Where an application for judicial review involves issues of environmental concern **it is not necessary that the applicant demonstrates an expertise in the subject matter. All that is required is that they demonstrate some knowledge or concern for the subject**. So an amateur ornithologist or bird watcher might raise a concern about the potential loss of a bird's habitat; or a fisherman about the effect of a hydro – electric scheme on fish; or a local historian about the effect on an archaeological or historical site; or a local resident on the loss of a local beauty spot frequented by the local community…The Board is satisfied that the appellants have

[195] [2024] UKPC 3 at 37

demonstrated a sufficient interest in the environmental issues... **In particular, Mr. Mussington's scientific background, his knowledge of the flora and fauna in the area, his status as a local resident, and his experience of conducting environmental assessments amply demonstrate a sufficient interest in the subject matter of the application for judicial review**."[196]

[288] The Board's reasoning in **Mussington** is wholly applicable to the instant case. When the learning in **Mussington** is applied to this case, it is abundantly clear that GLA possesses the requisite standing to bring this claim. As the issues were distilled, it is clear that GLA have shown genuine concern in the environmental development of Grenada being exercised in a transparent, comprehensive and sustainable fashion.

[289] GLA has proven, through the complaints outlined in the evidence of Dr. Daniel, Mr. Joseph – Witzig, Ms. Ferguson and Mr. Joseph, that they have knowledge of the area, were resident in Grenada and have experience and were involved in conducting environmental assessments. In addressing Range's complaint about GLA's incorporation, having found that Dr Daniel and Mr. Joseph – Witzig had standing in their own individual capacity as persons concerned about the environment, I adopt the dicta in **R v Leicestershire CC ex parte Blackfordby and Boothorpe Action Group Ltd** –

"…The incorporation of a local action group ought not to be a bar to the bringing of an application for judicial review. **Technically it may be said, the company does not have a relevant interest of its own; but in substance it represents the interests of local residents who, many of whom, do have a relevant interest**. Incorporation has a number of advantages…It is true that another advantage is the avoidance of substantial personal liability of members for the costs of unsuccessful legal proceedings. But that should not preclude the use of

[196] [2024] UKPC 3 at 57 - 58

a corporate vehicle, at least where incorporation is not for the sole purpose of escaping the direct impact of an adverse costs order …”[197]

[290] The foregoing matters qualify them as having sufficient interest in the subject matter of the claim for judicial review, and I find that GLA does in fact have standing to bring the instant claim.

WHAT, IF ANY RELIEF, SHOULD BE GRANTED TO GLA.

[291] Having considered the matters in the round, and for the reasons stated above, I do not agree with much of GLA’s filed case. My reservations about the golf course at Levera and the lagoon at La Sagesse have been outlined above. This means that GLA has been only partially successful in its concerns about PADA’s determination of the applications for planning permission for the 3 projects.

[292] GLA has sought extensive remedies in this claim, and for the areas in which GLA has succeeded, this court has the discretion to make the declarations and orders requested by GLA. In exercising its discretion however, I am mindful of the concerns raised by PADA and the Interested Parties about why GLA’s relief ought not to be granted, principally due to GLA’s delay in bringing the claim. The issue of delay will therefore be considered at this stage.

DELAY

Range’s delay arguments

[293] Range first raised the issue of the delay in this claim in its application to be added as a party to the claim and again in its application to strike out GLA’s claim. In prior rulings in this matter, this court indicated that the issue of delay could be addressed at the substantive hearing of the matter[198]. In both pre-trial

[197] BLD 0407001096
[198] See decision in GDAHCV2021/0290 dated 29th March 2022 at paragraph 42

and post-trial submissions, Range relied on rule 56.4 of CPR 2023, **Bass, Roland Browne v AG and PSC**[199] and **R v Lichfield District Council and Christopher J.N. Williams ex parte Securities Limited**[200] to make the point that GLA's delay is relevant at 2 stages – first as a bar as an application for leave, and secondarily as a discretionary bar to the granting of any relief.

[294] Range also lamented that their development has been completed, employing hundreds of Grenadians, and it would not be in the interests of good administration to grant any of the reliefs sought by GLA about Range's planning permission. Range makes the point that Dr. Daniel began to engage with Range from March 2020, and between August 2020 and 29th March 2021, there were several communications and documentation passed between the parties. Range further indicates that it was not until January 2021 that GLA was incorporated and another 3 months passed until GLA sought leave for judicial review on 26th March 2021.

Heng Sheng's delay arguments

[295] Heng Sheng addressed the issue of delay in its closing submissions by providing a helpful chronology of the timeline of Heng Sheng's application for approval in principle in December 2019 and the approval for the construction of temporary workers housing in June 2020. Heng Sheng points out that from Mr. Joseph – Witzig's evidence, he became aware of the Levera development in August 2020, members of GLA attended a meeting about the Levera development in September 2020 and GIS published a newsletter indicating that Levera's EIA was still in progress in September 2020.

[296] Heng Sheng submits that GLA's evidence does not give a clear reason why it took 7 months from GLA's awareness of the development to the filing of the application for leave. Heng Sheng further submits that GLA never sought an injunction to stop the progress of the works and that it instead spent some time on a petition to put political pressure on PADA, as an alternative to seeking judicial review. Heng Sheng relies on **R (Thorton Hall Hotel Ltd) v Wirral**

[199] [2010] ECSCJ NO. 331
[200] [2001] EWCA CIV 304

MBC[201] as outlining the principles that should guide the court when considering delay –

> **"**When a grant of planning permission is challenged by a claim for judicial review, the importance of the claimant acting promptly is accentuated. The claimant must proceed with the greatest possible celerity; where third parties have had a fair opportunity to become aware of, and object to, a proposed development… objectors aggrieved by the grant of planning permission must reasonably be expected to move swiftly to challenge its lawfulness before the court…Developers are generally entitled to rely on a grant of planning permission as valid and lawful unless a court has decided otherwise…the concept of detriment to good administration is not tightly defined, but will generally embrace the length of the delay in bringing the challenge, the effect of the impugned decision before the claim was issued and the likely consequences of its being re-opened."[202]

Hartman's take on the delay point

[297] Hartman submits that GLA failed to act with the requisite promptness, because GLA did not file its claim until almost 18 months after the decision and almost 8 months after GLA alleges it became aware of the decision. Hartman also points out that GLA did not seek injunctive relief, and as a result, the Hartman development has substantially progressed. Hartman also invited the court to consider the meaning of "undue" or "unreasonable" delay in the jurisprudence on judicial review claims in the Commonwealth Caribbean, and submits that the general approach is summarized in the Fordham's Judicial Review Handbook as –

> "A claimant has a duty to act promptly, not a right to wait for up to three months. Some contexts are recognized as calling for special, sometimes the utmost, promptness. The clock starts when the grounds first arise and does not stop until the claim is lodged...Care is always needed in letting time lapse"[203].

[201] [2019] EWCA Civ 737
[202] Ibid at 21
[203] Sixth Edition at 26.2

[298] Hartman also relied on **R v Cotswold District Council ex parte Barrington Parish Council**[204] and submits that to grant GLA's relief now would prejudice the rights of the company as an innocent third party and amount to a detriment to good administration. Hartman continues that this is not a case of delay simpliciter and Hartman is not barred from raising the issue of delay, as the Court of Appeal permitted the revisiting of the issue of the delay at the substantive hearing.

GLA's response to the delay issue

[299] GLA's rejoinder is that the timing of the claim must be examined against the backdrop of PADA's failure to provide the Grenadian public with information about the developments. The foregoing, GLA claims, is compounded by the register containing sparse and limited information[205]. GLA also rejects the suggestion that there was unreasonable delay, pointing out that this court granted leave to apply for judicial review with full knowledge of the time that had elapsed since the decisions under challenge and the issuance of the claim. GLA suggests, in reliance on **Bass,** that the court should adopt the learning in **R v Lichfield DC ex parte Lichfield Securities Ltd**[206] that the issue of delay should only be revisited where –

> "(i) if the judge hearing the initial hearing has expressly so indicated; (ii) if new and relevant material is introduced at the substantive hearing; (iii) if exceptionally, the issues as they have developed at the full hearing put a different aspect on the question of promptness; (iv) if the first judge has plainly overlooked some relevant matter or otherwise reached a decision per incuriam."[207]

[300] GLA argues that none of the above criteria have been satisfied. GLA further laments that GLA only effectively became aware of the status of the developments after disclosure was ordered. GLA's position is that the decision

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[204] (1998) 75 P. & C.R. 515
[205] Paragraph 78 of GLA pre – trial submissions filed on 20TH September 2024
[206] [2001] EWCA Civ 304
[207] Ibid at 34

making done by PADA was done behind closed doors, and asked the court to consider **R (Macrae) v Herefordshire District Council**[208], where the court reasoned –

> "Whether an application for permission to apply for judicial review is made promptly will depend upon all the circumstances. One of those circumstances is the extent to which the alleged error of law in the decision is plain or whether the decision "leaves the claimant in the dark" as to the basis on which it was taken. In the latter case it would normally be reasonable for the claimant to seek to ascertain, so far as he reasonably can, what was the basis for the decision before he resorts to litigation."[209]

[301] GLA therefore asks the court to find that there has been no unreasonable delay in bringing this claim and that the reliance on the advanced stages of development and the detriment to be caused to good administration as argued by the Interested Parties as misconceived. GLA avers that it has consistently sought to progress the matter and avoid delays, pointing out that most of the delay during the proceedings was caused by PADA and the Interested Parties' "tactical decision" to apply to strike out the claim, and appeal the refusal of those applications, rather than proceeding to an early trial.

My take on delay in this case

[302] Rule 56.4 of CPR 2023 deals pointedly with the issue of delay –

> "(1) In addition to any time limit imposed by any enactment, the judge may refuse to grant relief in any case in which the judge considers that there has been unreasonable delay before making the application.
> (2) When considering whether to refuse to grant relief because of delay the judge must consider whether the granting of relief would be likely to –

[208] [2012] EWCA Civ 457
[209] Ibid at 12

(a) be detrimental to good administration; or

(b) cause substantial hardship to or substantially prejudice the rights of any person."

[303] The learning on delay in **Fishermen and Friends of the Sea v The Environment Management Authority and BP Trinidad and Tobago LLC**[210] as reinforced in **Devant Maharaj v National Energy Corporation of Trinidad and Tobago**[211] found –

"41. The allocation of issues of delay and extension of time, on the one hand, and prejudice and detriment to good administration on the other, to discrete hearings may have lent some support to the notion that extension of time is a threshold issue and that issues of prejudice or detriment do not arise at that stage. However, for the reasons given at paras 27 and 28, above, Caswell provides no justification for the claimed insulation of these issues from each other. Furthermore, civil procedure has developed considerably in England and Wales since 1990. Nowadays the pre-action letter of response allows a respondent or interested party to draw attention to the possibility of any prejudice or detriment. Compliance with pre-action protocols and the Civil Procedure Rules should ensure that in most cases issues of prejudice or detriment to good administration are identified at the outset. Where such issues are raised by a defendant in the context of delay, it will be open to the judge to adjourn the question of leave to an inter partes hearing or to order "a rolled-up hearing", at which leave will be considered, followed immediately by the substantive application, if leave is granted. (Greenpeace II, for example, was a rolled-up hearing.) In either case, full consideration can be given to issues of extension of time, prejudice and detriment, on the basis of evidence filed by the parties. **In any event, even if leave is granted without full consideration of issues of prejudice and detriment resulting from**

[210] [2005] UKPC 32
[211] [2019] UKPC 5

delay, these may still be a bar to relief at the substantive hearing…"[212] (bold emphasis mine)

[304] The case law is settled that the court has the discretion to grant relief as is appropriate, based on the facts and circumstances of each individual case. The case law is well established that the grant of judicial review is discretionary[213] and that it does not immediately follow that if an unlawful act is found that there is an unqualified right to any of the remedies claimed[214]. One of the factors for the court's consideration is the advanced stage of development of the projects, and for present purposes, this court notes that the Range project is now fully operational as the Six Senses Hotel.

[305] However, as found by the Board in **Mussington**,

"The fact that the airstrip is complete does not render the question moot. If, as a result of any subsequent procedure, a court finds that the DCA acted outwith its power then it will be for the court to determine what remedy, if any, should be afforded to the appellants. **The remedies potentially available would include an order requiring the land to be restored to its original state**."[215] (bold emphasis mine)

[306] While accepting that the public register was not adequately maintained and accessible as required by the Act, the evidence suggests that GLA had sufficient engagement with the 3 developments to do 3 comprehensive reviews of the EIAs. There was also some delay in GLA's part in taking the initiative to commence this claim. Taking the matter in the round, GLA could have acted with more alacrity to bring their claim after becoming aware of the developments concerned and not wait almost an entire year to commence proceedings.

[307] However, while criticism may be thrown at GLA for its failure in this regard, I do not believe that it ought to be refused relief on the issue of the golf course and the

[212] [2019] UKPC 5 at 41
[213] R v IRC, ex parte National Federation of Self – Employed and Small Businesses Ltd [1982] AC 617
[214] Roland Browne v The Public Service Commission SLUHCVAP2010/0002
[215] [2024] UKPC 3 at 33

lagoon on this basis, especially when considering the phased approach to development undertaken by the Interested Parties. The Interested Parties have led evidence that the projects have advanced, but there is no evidence that the golf course at Levera or the lagoon at La Sagesse have commenced development in any substantial way.

OVERALL FINDINGS

[308] In the circumstances of this case, and considering the fact for all three projects, there has been substantial progression occurring and finding only minimal challenges with respect to the golf course and lagoon, I will only make orders with respect to those 2 decisions. I make this determination after much deliberation on the background circumstances.

[309] I do not find that, except with regards to the Golf Course and the Lagoon, that PADA acted wholly unreasonably by arriving at the decisions which it did. In almost all of the projects, there was substantial information to inform planning judgments made by the Authority. This finding is made after considering not only the EIA for the projects, but information that it had gained from previous EIAs and studies, its own knowledge of local conditions gained from site inspections and reports from different government agencies.

[310] While PADA's exercise of its discretion was not perfect, it must be recalled again, that the scrutiny required on exercises of this sort is not a scientific dissection of the merits of the planning authority's functions. As tempting at it may appear to prefer a more or less rigorous approach to planning decisions and to cavil about a planning decision to grant permission to develop land, the law demands nothing more than an examination as to whether what was done was lawful, procedurally fair and/or not so outrageous as to amount to a failure to make a decision at all. This is not the case with respect to these 3 projects. However, as I have found, there ought to have been further scrutiny and requests for further information on the golf course at the Levera site and the lagoon at the La Sagesse site.

[311] Some of GLA lamentations were not found to be insubstantial or trivial, as the need for adequate protection and preservation of the natural environmental are not matters to be taken lightly or minimized and the public register ought to be properly maintained as required by statute. However, none of what was presented leads me to conclude that PADA acted unlawfully or unreasonably in granting the planning permissions in question. As appeared throughout this matter, PADA had a plethora of material before it and considered what it ought to consider and acted lawfully and reasonably in so doing. At the end of the day, it is for the policymakers and the planning authority to determine what is necessary for sustainable development of the resources of the State, even where members of the society may think that limited or no development ought to occur in certain areas.

[312] The courts are only there to step in when what is done is in breach of the law and procedure or is so blatantly unreasonable or irrational. A graphic example in the case is that of the Ramsar site boundaries. GLA complains that the decision would reduce the boundaries of the Ramsar site. PADA rejoins that the State has surveyed the site and delineated the boundaries. As such, PADA asserts, the boundaries claimed by GLA are incorrect. PADA has also assessed that the buffer between the development and the Ramsar boundaries are quite adequate for sustainable development purposes.

[313] PADA has also testified before this court that the developer was asked to reduce and has so reduced the size of the project site to ensure a sufficient buffer between the development and the Ramsar site. These are policy and planning considerations and the State itself is permitted to build within the Ramsar site, so long as it does in a sustainable manner. As stated by Sullivan J in **R (Newsmith Stainless) v Secretary of State for the Environment, Transport and the Regions**[216] courts must be astute to ensure that such challenges are not used as a cloak for what is in truth a return to the arguments on the planning merits. I find that GLA has attempted in many respects to do just what the court is enjoined to guard against, that is, attacking planning

[216] [2001] EWHC Admin 74

decisions on their merits, because they may be unhappy about policy decisions being made.

[314] I am also reminded that judicial review claims are to be heard and dispensed with expedition. This is due to the need for finality and certainty about planning decisions, as finality and certainty are also especially important from the developer's standpoint, since the latter may lose significant financial input by inordinate delay. I will confess that a considerable part of the delay in rendering this decision lay in the sometimes pedantic manner in which this case was presented by some of the participants.

[315] Considering all the foregoing, I will order that the golf and lagoon approvals be set aside as requested by GLA. I will also direct PADA to reconsider the applications for the golf course and lagoon in light of the observations that I have made above. I will also grant the remedies sought with respect to the public register. All of GLA's other claims for relief are accordingly refused, having been found to be unmeritorious.

COSTS

[316] Based on the foregoing, GLA has only been partially successful in its claim against PADA. Considering the discretion of the court on costs, and in the circumstances, I award costs to GLA in the sum of $5,000.00, payable by PADA within 28 days of this decision. I will not award costs against GLA for the parts of its claim that failed.

[317] I see no reason to depart from the general rule on costs in these matters as stipulated in CPR 56.11(6) 2023, which circumscribes the court's discretion to award costs against an unsuccessful applicant. The rule would only allow costs against an unsuccessful applicant in administrative claims where the court finds that "*the applicant has acted unreasonably in making the application or in the conduct of the application.*" There is nothing on this claim to suggest to me that GLA, while incorrect in its assessment of the propriety of PADA's actions, has acted with anything but genuine, but somewhat over exuberant, concern about the environment and land development in Grenada. Although addressing

rules of court in Trinidad and Tobago, commendable and helpful discourse on the development and rationale on the procedural rules on costs generally and more particularly in judicial review claims can be found in the Trinidad and Tobago consolidated Court of Appeal's decision of **Judicial and Legal Services Commission and Her Worship Magistrate Sarah Da Silva**[217].

CONCLUSION

[318] With caution to PADA that it runs the risk of having its decisions challenged or set aside if they continue to show wanton disregard for their public duty to keep a proper register and to allow access to persons as prescribed by law, they have been partially successful in defending this claim. The disclosures made in these proceedings do not sanitize PADA's failures to keep the register maintained in the manner required by the Act, with the consequences of such failings being protracted legal challenges, the incurring of tremendous costs and much anxiety.

[319] GLA is also reminded that environmental control is an iterative process, which does not end with the approval of an EIA and that while debate on development is wholesome and to be always encouraged, the ultimate arbiters on the question is the policy maker. Our democratic structures are framed along these lines. Thus, while we may disagree with the policymakers about their approach to development issues or even their decisions, it is their remit and their remit alone to make such decisions, so long as they follow the prescribed law and applicable procedures written or otherwise. As observed by Lord Legatt in **R (On the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others**[218]

> "The legislation does not prevent the competent authority from giving development consent for projects which will cause significant harm to

[217] Civil Appeal No P-029 of 2023
[218] [2024] UKSC 20

the environment. But it aims to ensure that, if such consent is given, it is given with full knowledge of the environmental cost."[219]

[320] In light of the foregoing discourse, it is ordered that:

1) A declaration is granted that PADA has failed in its public duty to keep a publicly accessible register in accordance with section 69 of the Act;
2) An order of mandamus is made directing PADA to update the existing public register in respect of the 3 projects and thereafter to maintain the register in accordance with section 69 of the Act and the common law;
3) An order of mandamus is made directing PADA to produce to GLA in respect of the La Sagesse development, the Levera development and the Mt. Hartman development, conditional upon payment of the prescribed fees, the planning applications, all plans, information and material as defined in section 69 of the Act;
4) A declaration is granted that the decision of 25th May 2022 to grant planning permission for the golf course at Levera in the parish of Saint Patrick was irrational because the EIA done by Niles and Associates dated March 2021 was so inadequate in addressing the environmental impact of the golf course that no reasonable authority could have relied upon it to grant planning permission;
5) An order of certiorari is made quashing the decision made on 25th May 2022 by PADA to grant permission for the golf course at Levera;
6) An order of mandamus is made directing PADA to reconsider Application No. 19232 for planning permission with respect to the golf course at the Levera development;
7) A declaration is granted that the decision dated 27th January 2021 to grant planning permission for Range to develop the Lagoon at La Sagesse was irrational in that the EIA by Jeco

[219] [2024] UKSC 20 at paragraph 3

Caribbean dated June 2019 was so inadequate with respect to the lagoon that no reasonable authority could have relied upon it to grant planning permission;

8) An order of certiorari is made quashing the decision made on 27th January 2021 by PADA to grant permission for the lagoon at La Sagesse;
9) An order of mandamus is made directing PADA to reconsider Application No. 18397 for planning permission with respect to the lagoon at the La Sagesse development;
10) PADA shall pay costs in the sum of $7, 500.00 to GLA within 28 days of this decision;

[321] I also wish to take this opportunity to thank all counsel for their fulsome and engaging written submissions and their immense patience in awaiting the ruling in this claim.

Raulston L.A. Glasgow
High Court Judge

BY THE COURT

REGISTRAR