



Inc. to the Chief Town Planner on the 30<sup>th</sup> of March 2015 bearing Reference Number 0445/03/2015 B – to grant permission to the said Visions Development Inc. to erect a hotel at Bay Street in the parish of Saint Michael in the Island of Barbados constitutes:-

1. a decision that conflicts with the policy of several Acts of Parliament inclusive of the **Town and Country Planning Act** CAP 240 and the **Coastal Zone Management Act** CAP 394;
2. a decision that was made in breach of the provisions of the **Town and Country Planning Act** CAP 240 of the Laws of Barbados;
3. a decision, the making of which is not in compliance with relevant requirements specified under the **Town and Country Planning Act** CAP 240 of the Laws of Barbados;
4. an unreasonable or irregular or improper exercise of discretion on the part of the Minister responsible for Town and Country Planning;
5. a decision that is contrary to law;
6. a decision that is based on and invalidated by a failure to satisfy or observe conditions or procedures required by law;
7. a decision that is based on and invalidated by breach of or omission to perform a duty on the part of the Minister responsible for Town Planning and/or the Chief Town Planner and/or the Director of the Coastal Zone Management Unit;
8. an act or decision that is in excess of the jurisdiction of the Minister responsible for Town and Country Planning and that is ultra vires the **Town and Country Planning Act**, CAP 240 of the Laws of Barbados;
9. a decision that is not based on or supported by the evidence or the objective information that such a decision requires;

10. a decision that is marred and invalidated by a failure of the Minister responsible for Town and Country Planning to apply or adhere to the principles of Natural Justice;
  11. a decision that is marred and invalidated by the Defendant's breach of the Common Law duty that obligates a public authority such as the Defendant to act fairly towards all relevant parties and to consult the residents of the nearby housing districts and the regular or habitual users of the relevant beach; and
  12. a decision that conflicts with the policy of the Cabinet and Government of Barbados as outlined in the Physical Development Plan, the Management Plan for Historic Bridgetown and its Garrison, and in the National Sustainable Development Policy.
- (B) An immediate interim order suspending the said grant of permission until the final determination of the proceedings herein.
- (C) An order of certiorari quashing the said decision or grant of permission.
- (D) Such further and other relief that this Honourable Court considers to be appropriate and just in the circumstances.
- (E) Costs in favour of the Claimant to be agreed or assessed.

**A draft of the Order that the Claimant seeks is attached**

**The grounds on which the said relief is sought are as follows:-**

**GROUND 1**

- (a) In the year **1986** the Minister responsible for Town and Country Planning exercised the power granted to him under section 18 of the **Town and Country Planning Act** to remove from the Chief Town Planner all planning applications relating to beach front land and



instead to undertake the duty of processing and determining such applications himself. This was accomplished through the making of the **Town and Country Planning Directions** 1986/103.

- (b) Section 4 of the **Town and Country Planning Act** made provision for such a development by establishing and providing the Minister with a Town and Country Planning Advisory Committee whose primary function is to advise the Minister on the applications that are referred to him under the combined effect of Section 18 of the Act and the 1986 Directions, such as Application Reference Number 0445/03/2015B.
- (c) However, the Defendant wrongfully and in breach of section 1 of the First Schedule of the **Town and Country Planning Act** failed and/or neglected to appoint the requisite members to the Town and Country Planning Advisory Committee and as a result there was no properly constituted Town and Country Planning Advisory Committee in existence at the time when the said Application reference number 0445/03/2015B was referred to the Defendant, as well as during the time that the said application was dealt with by the Defendant.
- (d) The Defendant, who does not possess the specialized professional knowledge and expertise required to assess complicated applications for town and country planning permission, therefore did not receive any advise from a properly constituted Town and Country Planning Advisory Committee in respect of the said Application reference number 0445/03/2015B as stipulated by and in breach of Section 3 of the First Schedule of the **Town and Country Planning Act**.
- (e) In light of the fact that the Defendant's decision to grant permission to erect the said 15 storey hotel was not informed by expert advise from a properly constituted Town and

Country Planning Advisory Committee, it was made in breach of the Town and Country Planning Act and is invalid and unlawful.

## **GROUND 2**

- (a) The current Physical Development Plan of Barbados (established under Section 5 of the Town and Country Planning Act) was last amended and updated in the year 2003. The current Physical Development Plan is therefore a 2003 Plan which was approved by Parliament in the year 2007 to come into operation in the year 2008.
- (b) Under section 11 (1) of the **Town and Country Planning Act** it is stipulated that “at least once in every five years after the date on which a development plan for the whole of the Island comes into operation, the Chief Town Planner **shall** carry out a fresh survey of the Island and submit to the Minister a report of the survey together with proposals for any alterations or additions to the plan that appear to him to be required”.
- (c) In breach of the said section 11 (1) of the **Town and Country Planning Act**, the Chief Town Planner failed and/or neglected to carry out a fresh survey of the Island within 5 years of the year 2003 and/or of the year 2007 and/or of the year 2008. The Chief Town Planner also failed to submit any report of a fresh survey of the Island to the Minister responsible for Town and Country Planning within 5 years of the year 2003 and/or 2007 and/or 2008.
- (d) The last time that the Physical Development Plan was subjected to a fresh survey of the island and amended and updated was the year 2003. As a result, the current Physical

Development Plan is an outdated plan that has not been periodically updated as stipulated by the **Town and Country Planning Act**.

- (e) The unlawful failure to review and update the Physical Development Plan since the year 2003 is compounded by the fact that in the year 2011 the **United Nations Educational Scientific and Cultural Organisation** (UNESCO) designated the Historic City of Bridgetown and its Garrison a “world heritage site”. This historic 2011 development had fundamental implications for development planning for the City of Bridgetown and its environs and it was critical that it be factored into a reviewed and updated Physical Development Plan as a matter of urgency. This was never done.
- (f) Under the combined effects of Sections 16 and 18 of the **Town and Country Planning Act** and the **Town and Country Planning Directions 1986/103**, the Defendant was legally obligated to have regard to the provisions of the Physical Development Plan in his dealing with or assessment of the said application reference no. 0445/03/2015B and prior to his making a decision on the said application.
- (g) In light of the fact that the Physical Development Plan that was in existence during the time that the Defendant dealt with or assessed the said application was an outdated Plan that had unlawfully not been updated, the Defendant was not in a position to and did not carry out his statutory duty to have regard to a properly constituted Physical Development Plan in his dealing with or assessment of the said application.
- (h) The said failure of the Defendant to carry out his statutory duty vitiates and invalidates the Defendant’s decision to grant the said permission.



### GROUND 3

- (a) Section 80 A of the **Town and Country Planning Act** stipulates in effect that the Defendant was required to have regard to the Coastal Zone Management Plan referred to in the **Coastal Zone Management Act** CAP 394 in dealing with or assessing the said application reference number 0445/03/2015B.
- (b) Section 3 of the **Coastal Zone Management Act** stipulates that as soon as possible after 1<sup>st</sup> May 2000 the Director of the Coastal Zone Management Unit shall prepare for the approval of the Minister a draft coastal zone management plan which, as stipulated by section 4 of the Act “shall comprise policies, strategies and standards that provide for the management and conservation of coastal resources”, inclusive of “standards for environmental impact assessment for development which may affect the conservation and management of coastal resources” and “standards for the management of underwater parks”. And Section 7 of the Act provides for the Minister approving the said draft management plan.
- (c) Section 11 (1) of the **Coastal Zone Management Act** also stipulates that “at least once in every 5 years from the date on which the coastal management plan first comes into effect under section 7 (2) the Director (of the Coastal Zone Management Unit) shall conduct a full review of the plan and submit to the Minister a report on the review together with proposal for any amendments which appear to him to be required”, and Section 11 (2) goes on to establish that such proposals for amendment shall be treated as draft amendments.
- (d) The current Coastal Zone Management Plan of Barbados consists of three volumes, namely, Volume 1 – Integrated Coastal Management – the Barbados Policy Framework (1998); Volume 2 – Integrated Coastal Management Plan for the Caribbean Coasts of

Barbados (1998); and Volume 3 – Integrated Coastal Management Plan for the Atlantic Coast of Barbados (1999), and had been in existence and in use as a consolidated Coastal Zone Management Plan for far in excess of five years at the time of the making of Application Reference Number 0445/03/2015B.

- (e) In breach of section 11 (1) of the **Coastal Zone Management Act** the Director of the Coastal Zone Management Unit failed and/or neglected to conduct full reviews of the said plan on a five yearly basis and to submit to the Minister reports on the said reviews together with proposals for any required amendments.
- (f) In light of the fact that the Coastal Zone Management Plan that was in existence during the time that the Defendant dealt with or assessed Application Reference No. 0445/03/2015B was an outdated Plan that had unlawfully not been updated, the Defendant was not in a position to and did not carry out his statutory duty to have regard to a properly constituted Coastal Zone Management Plan in his dealing with or assessment of the said application.
- (g) Alternatively, if it is found that the said three Integrated Coastal Management Plans were never legally constituted as the Coastal Zone Management Plan under Section 7 of the **Coastal Zone Management Act**, then the Director of the Coastal Zone Management Unit and the Minister are in breach of their obligations under the **Coastal Zone Management Act** to establish a Coastal Zone Management Plan as soon as possible after 2000, with the result being that there was no properly constituted Coastal Zone Management Plan available for the Defendant to refer to during his processing of Application Reference Number 0445/03/2015B
- (h) In any event, the failure of the Defendant to carry out his statutory duty to have regard to a properly constituted Coastal Zone Management Plan in his processing of Application



Reference Number 0445/03/2015B vitiates and invalidates the Defendant's decision to grant the said permission.

#### **GROUND 4**

(a) Under Section 12.2 of the current Physical Development Plan it is stipulated as follows:

“Where approval of applications entail significant changes to the proposed land use structure set out in the Physical Development Plan Amended 2003, they shall be deemed to be amendments to the Plan. This would include such instances as:..... development **impacting** Natural or Cultural Heritage Conservation Areas.....”

(b) And Section 9 (4) of the **Town and Country Planning Act** outlines the legal procedure that is to be applied to proposals to amend the Physical Development Plan as follows:-

“Before approving any ..... proposals for the amendment of any such plan, the Minister shall cause to be published in three issues of the Official Gazette and of at least one newspaper published in the Island a notice –

(a) Stating ..... proposals for the amendment of such a plan.....

(b) Naming the place or places where copies of the ..... proposals may be inspected and purchased by the public; and

(c) Stating the time (being not less than 28 days from the last publication of such notice in the Official Gazette) within which objections or representations may be made to the Minister with respect to the..... Proposals”.

Section 9 (5) also provides a procedure for persons to object to the said proposal and for the holding of a public enquiry into the proposal. Furthermore, Section 10 stipulates that if the Minister ultimately approves the proposal, he must then go on to publish a Notice of his approval in three issues of the Official Gazette and in one issue of a Newspaper, before finally submitting the approved proposal for the ultimate approval of both Houses of Parliament.

- (c) Section 2.4.4 of the Physical Development Plan explains that “Cultural Heritage Conservation Areas contain groups of buildings and structures that together project a unique architectural character and/or reflect some aspect of the heritage of the community..... Cultural Heritage Conservation Areas may include both Listed Buildings and other non-heritage buildings. Ten areas have been proposed for Conservation Area status as shown on Map 2”.
- (d) And Section 2.5.7 of the Physical Development Plan defines “Natural Heritage Conservation Areas” as “sensitive natural environments which require protection from potentially incompatible development. The locations of Natural Heritage Conservation Areas are shown on Map 6.....”. Furthermore, Section 4.3.3 of the Physical Development Plan goes on to further explain that – “the Natural Heritage Conservation Areas designation applies to sensitive or unique ecosystems both within and outside of the National Park, which require protection from urban development and intensive recreational development. The Natural Heritage Conservation Areas designation is divided into two categories: Natural Heritage Conservation Areas: Land,.....; and Natural Heritage Conservation Areas: Marine, which encompasses environmentally sensitive off-shore environments.”

- (e) The Map included in the Physical Development Plan marked Map 2a and titled “Cultural Heritage and Archeological Resources: Bridgetown Area” depicts a Cultural Heritage Conservation Area designated “**Waterfront**” which area includes or is immediately adjacent to the site to which the said Application Reference Number 0445/03/2015B appertains.
- (f) In addition, the Map included in the Physical Development Plan marked Map 6 and titled “Barbados System of Parks and Open Spaces” depicts a Natural Heritage Conservation Area (Marine) in Carlisle Bay and designated the Carlisle Bay Marine Park. This Marine Natural Heritage Conservation Area is adjacent to the site to which application reference no. 0445/03/2015B appertains.
- (g) Thus, the development proposed in Application Reference Number 0445/03/2015 B (the erection of a massive 15 storey hotel) constitutes development “**impacting**” the said Cultural Heritage Conservation Area designated “**Waterfront**” and the said Natural Heritage Conservation Area designated “**Carlisle Bay Marine Park**”.
- (h) In the circumstances, the planning development application reference number 0445/03/2015B constituted a proposal to amend the Physical Development Plan, and the Defendant was therefore required to deal with it in accordance with the procedure outlined in Sections 9 and 10 of the Town and Country Planning Act.
- (i) In light of the fact that the Defendant did not apply this procedure to the said application, the permission granted by the Defendant has not been granted in accordance with the stipulated lawful procedure and is therefore null and void.



## **GROUND 5**

- (a) In or about the year 2009 the Cabinet of Barbados established and appointed a **World Heritage Task Force** to oversee and manage a nomination process aimed at securing from the **United Nations Educational Scientific and Cultural Organization** (UNESCO) the designation of the historic City of Bridgetown and its Garrison as a World Heritage Site. The Task Force ended its remit in 2010.
- (b) On the 1<sup>st</sup> of July 2010 the Cabinet of Barbados established and appointed a **Barbados World Heritage Committee** and gave it responsibility for the overall management and protection of the “Outstanding Universal Value” of Historic Bridgetown and its Garrison. And in pursuant of this objective, the Committee developed a **Management Plan For Historic Bridgetown And Its Garrison**. The said Plan was approved and adopted by the Cabinet of Barbados before being submitted to UNESCO in February 2011.
- (c) In June 2011 UNESCO designated Historic Bridgetown and its Garrison a World Heritage Site.
- (d) The **Management Plan For Historic Bridgetown And Its Garrison** establishes that Historic Bridgetown and its Garrison comprises a geographical area which contains groups of buildings and structures that together project a unique architectural character and that also reflect important and historic aspects of the heritage of the Barbadian community, thereby in effect constituting a Cultural Heritage Conservation Area as defined in the Physical Development Plan. The said Management Plan also delineates the outline of the geographical area of Historic Bridgetown and its Garrison and depicts this outline on several maps.

- (e) The site that pertains to the said Application Reference Number 0445/03/2015 B is not only located within the Cultural Heritage Conservation Area that is Historic Bridgetown and its Garrison, but is also, inter alia: a Listed Building in its own right (Harbour Police Station); a Listed Building that is immediately opposite another Listed Building (Bethel Methodist Church); and a Listed Building that is adjacent and/or in close proximity to such other Listed Buildings as Two Bonds, Bay Gallery, Carlisle View and Manning Bond.
- (f) Thus, the development proposed in Application reference number 0445/03/2015B (the erection of a 15 storey hotel) constitutes development “**impacting**” the Cultural Heritage Conservation Area known as Historic Bridgetown and its Garrison, which also happens to be a UNESCO designated World Heritage Site.
- (g) And as a result, on this ground as well, the said application reference number 0445/03/2015B constituted a proposal to amend the Physical Development Plan, and the Defendant was therefore required to deal with the application in accordance with the procedure outlined in Sections 9 and 10 of the Town and Country Planning Act.
- (h) In light of the fact that the Defendant did not apply this procedure to the said Application, the permission granted by the Defendant is unlawful and null and void.

## **GROUND 6**

- (a) Section 2.4.3.7 of the Physical Development Plan states that – “Development adjacent to or in the vicinity of a Listed Building, where through its siting, scale, or design, it would have a major adverse impact on the setting of the Listed Building will be discouraged.”

- (b) And Appendix B of the said Physical Development Plan contains an Inventory of Listed Buildings in Bay Street as follows:- Bethel Methodist Church, Two Bonds, Manning Bond (corner Farnell Alley), Nelson Pharmacy (corner Parfitt Alley), Bellair Jazz Club, Martineau Building (corner Beckwith Street), Bay Gallery, Carlisle View, Harbour Police Station, The Round House, Child Care Department, Old Eye Hospital, and the list goes on.
- (c) It is clear therefore that the massive development proposed in Application reference number 0445/03/2015B is not only on the site of a Listed Building (Harbour Police Station), but is adjacent to or in the vicinity of at least eleven (11) other Listed Buildings. It is also self-evident that the siting of the development and its sheer scale will inevitably produce a major adverse impact on the setting of the said group of Listed Buildings.
- (d) In the circumstances the said development fits the criteria of a development that should be “discouraged” rather than one that should be approved.

#### **GROUND 7**

- (a) Section 2.5.2.1 of the Physical Development Plan Amended (2003) – the section entitled “**Environmental Impact Assessment**” – provides as follows:-
- “Applicants for planning permission for a change in use to, or expansion of any of the following classes of development are required to prepare and submit an Environmental Impact Assessment:
- vii) applications for initial construction of, or expansions to..... Jetties;
  - viii) sewage treatment facilities;



- In addition to the classes of development set out in 2.5.2.1 (a), the Chief Town Planner may require applicants for planning permission to prepare and submit an Environmental Impact Assessment if, in the opinion of the Chief Town Planner, a proposed development may have a significant negative effect on coastal or other environmental resources, Natural Heritage Conservation Areas, or adjacent land uses. The Environmental Impact Assessment, once completed, should be made accessible to the public.”
- (b) Furthermore, under Section 5.12 of the “Integrated Coastal Management Plan For the West and South Coasts of Barbados” – a component of the Coastal Zone Management Unit’s Coastal Zone Management Plan - it is stipulated in Table 28 of the said section that proposals to construct “large hotels” will require the carrying out of Environmental Impact Assessments.
  - (c) Section 2.5.2.1 of the Physical Development Plan also stipulates that “the Environmental Impact Assessment shall be prepared in consultation with the Environmental Impact Assessment Panel which shall oversee: the formulation of the terms of reference for the Environmental Impact Assessment;”
  - (d) Section 12.2 of the Physical Development Plan – entitled “The Approval Process” – also stipulates that “where Environmental Impact Assessments are required they shall be completed to the satisfaction of the Chief Town Planner **prior** to approval being given.”
  - (e) In the year 2002, the Town and Country Planning Department / Chief Town Planner produced and published a policy on Environmental Impact Assessments in a Town and Country Planning Department document entitled “**The Applicant’s Handbook and Guide To Town Planning**”.

- (f) In addition, in the year 2005, the Town and Country Planning Development/Chief Town Planner further elaborated this policy in respect of Environmental Impact Assessments in a publication entitled “**Environmental Impact Assessment Guidelines for the Preparation of Terms of Reference and Environmental Impact Assessment**”.
- (g) The year 2007 second edition of the **Handbook** outlined the policy and regulations in respect of Environment Impact Assessment (EIA) as follows:-

“PUBLIC CONSULTATION

Any application to the Chief Town Planner which requires the preparation of an environmental impact assessment shall be the subject of a public meeting. The EIA report shall be made available to the public for a period of not less than twenty-eight (28) days to allow for perusal and scrutiny. The EIA report shall be made available within the community, district or the main public library and the Town and Country Development Planning Office.

No later than fourteen (14) days after the public meeting the applicant is required to submit a report of the proceedings to the Chief Town Planner.

**Advertising**

The public meeting shall be advertised on local media and at least one daily newspaper announcing the availability of the EIA report at the commencement of the twenty-eight day period. The advertisement should occupy at least one quarter of a page in the newspaper and should be bold and noticeable.”

- (h) These regulations and their insistence on public consultations inclusive of town hall meetings were also in keeping with the new **National Sustainable Development Policy** which was produced by the Cabinet appointed “**National Commission on Sustainable Development**” in 2002, and which was approved by the Cabinet before being laid in Parliament in January 2004.
- (i) In light of the fact that the said Application Reference Number 0445/03/2015B constituted a proposal to construct, inter alia: a large hotel on the South Coast of Barbados; a jetty; and a sewage treatment facility, the Defendant was legally obligated to require the developer to carry out an **Environmental Impact Assessment (EIA)**, inclusive of the holding of at least one public or town hall meeting, before any decision could be made by the Defendant on whether or not to grant the said planning permission. The failure to require the carrying out of an EIA in respect of the Application therefore renders the said permission null and void.
- (j) Furthermore, it is clear from the vast number of Conditions – more than 57 in number – that the Defendant attached to the permission that he granted to erect the said 15 storey hotel, and the fact that a large proportion of those conditions related to coastal, environmental and natural and cultural heritage issues, that the Defendant was of the opinion that the said proposed development “may have a significant negative effect on coastal or other environmental resources, Natural Heritage Conservation Areas, or adjacent land uses”.
- (k) Therefore, in accordance with Section 2.5.2.1 of the Physical Development Plan, the Defendant was obligated to require the applicant to prepare and submit an EIA. Thus, on



this ground as well, the failure of the Defendant to require the carrying out of an EIA renders the said permission unlawful and null and void.

#### **GROUND 8**

- (a) The Defendant granted the said permission without having – at any time – consulted the citizens and residents of Barbados who routinely use the beach on which the Applicant proposed to build its 15 storey hotel and whose user of the beach would be adversely affected if the said hotel is permitted to be erected. Furthermore, the Defendant granted the said permission without having consulted the residents of the residential districts and housing areas that are in close proximity to the site of the proposed hotel and who would be adversely affected by the said hotel if it is permitted to be constructed.
- (b) The Defendant – in exercising his powers and duties under Section 18 of the **Town and Country Planning Act** and under the associated **Town and Country Planning Directions** – was also under a Common Law duty to act fairly towards and to consult the said users of the beach and the said residents of the nearby residential districts and housing areas (all of them being persons with a legitimate interest in the said planning Application) **before** taking a decision on the said Application.
- (c) The said Common Law duty to consult is generated by the duty cast by the Common Law upon a public authority such as the Minister responsible for Town and Country Planning to act fairly. The duty to consult is therefore a component of the wider Common Law duty to act fairly.

- (d) The Common Law duty that rested upon the Defendant to act fairly towards the said beach users and nearby residents by consulting them before making a decision on the said Application Reference Number 0445/03/2015B, is also reinforced by the Common Law doctrine of legitimate expectation.
- (e) The said beach users and nearby residents possessed a reasonable and legitimate expectation that the Minister responsible for Town and Country Planning would have consulted them on the said Application – particularly through one or more town hall meetings – before making a decision on the said Application.
- (f) By failing and/or refusing and/or neglecting to consult the said beach users and nearby residents the Defendant was in breach of his Common Law duty towards these persons, and as a result of such breach, the said permission that was granted is unlawful and null and void.
- (g) In addition, the duty to consult is also incorporated in the national governmental policy of Barbados, and is expressed in our nation’s “**National Sustainable Development Policy**” at Section 5.5 as follows:-

“Of fundamental importance for Sustainable Development is that all major stakeholders are involved in the decision making process at all levels..... Further to the above example, town hall meetings..... have become standard practice when addressing environmental issues in general..... Applications deemed to have wide socio-environmental implications are subject to public review..... It is essential that stakeholder views actually influence Government’s decision in a significant way

at every level from the development of national policies to the project development and execution stages.....”

And so, by failing to consult such major stakeholders as the nearby residents and the regular beach users, the Defendant was not only in breach of the Common Law, but was also in breach of national governmental policy, and as a result the decision to grant the permission is unlawful and null and void.

### GROUND 9

- (a) Section 16 (1) of the **Town and Country Planning Act** has the effect of obligating the Defendant – in carrying out his function under Section 18 to deal with the Application reference no. 0445/08/2015 – “to have regard to the provisions of the development plan.... **and to any other material consideration**”.
- (b) One such significant “**material consideration**” is the fact that in June 2011 UNESCO designated Historic Bridgetown and its Garrison a World Heritage Site.
- (c) Another such “material consideration” is that the people, civil society organisations, and Government of Barbados invested much time and effort and many resources in securing the said World Heritage Site designation, and have also developed extremely high hopes and ambitions about using the said World Heritage Site designation to foster the social, cultural and economic development of Barbados.
- (d) Yet another very significant “material consideration” is that UNESCO could and will cancel the said World Heritage Site designation if the Government of Barbados and its



regulatory agencies permit inappropriate development to take place within the World Heritage Site.

- (e) Under the applicable rules and policies a UNESCO world heritage site may lose its designation if the UNESCO World Heritage Committee determines that the designated site is not being properly managed or protected.
- (f) One of the grounds for the withdrawal of a UNESCO world heritage site designation is the “**visual disruption**” that may be caused by erecting a structure of inappropriate size, height or appearance in the world heritage site.
- (g) The permission given by the Defendant to construct a 15 storey modern hotel in a world heritage site that is characterized by its historical architecture, and in which the highest existing building is the seven story Central Bank building, therefore poses a grave danger to the world heritage site designation of Historic Bridgetown and its Garrison.
- (h) It is also to be noted that the Defendant neglected or failed to consult the **Barbados World Heritage Committee** on the said Application, and also failed to secure the approval or consent of the **Barbados World Heritage Committee** for the erection of the said 15 storey hotel.
- (i) In addition, the **Barbados National Trust** expressly disapproved of the said proposal to construct a 15 storey hotel in the world heritage site on the ground that it would do damage to the integrity of the world heritage site and would imperil the maintenance of the world heritage designation. This was also a material consideration that the Defendant was required to have regard to.

- (j) In the circumstances, the Defendant failed to have regard or to have proper and sufficient regard to the said material considerations, resulting in the decision to grant permission being invalid and null and void.

#### **GROUND 10**

- (a) The policy of the **Town and Country Planning Act**, the **Physical Development Plan**, the **Chief Town Planner**, and the **Town and Country Planning Department** is expressed in the latter's "**Applicant's Handbook And Guide To Town Planning**" (2<sup>nd</sup> edition) as follows:-

##### **"BUILDING HEIGHTS**

"The height of structures is a significant feature as it relates to the visual amenity and the protection of the landscape..... The hierarchical system of centres makes provision for a National Centre – Bridgetown, Regional Centres – Speightown, Holetown, Oistins and Six Roads..... Generally, the height of buildings in these areas would be in keeping with the surroundings. However, the Chief Town Planner reserves the right to permit additional height subject to a design review.

For beach front tourist accommodation a maximum of five (5) storeys or a height of fifty-five (55 ft.) is permitted. However, this may also vary based on a design review".

- (b) The policy pertaining to building heights in Bay Street is also expressed at Section 6.3.3.2 of the Physical Development Plan as follows:-

“In considering applications for lands abutting the Bay Street / Highway 7 corridor, development shall generally:

iii) step **down** in height to provide an appropriate transition to the lower density residential uses behind.

In considering applications for development on the coastal side of the corridor, every effort shall be made to protect, maintain and enhance pedestrian access and **views** to the beach in accordance with section 2.5.4”.

- (c) The grant of permission to erect a 15 storey hotel is therefore clearly in breach of these policies and regulations.
- (d) There is also a policy and regulation pertaining to the distance that a building must be constructed from the High Water Mark. This policy and regulation is expressed in the **Applicant’s Handbook And Guide To Town Planning** at page 38 as follows:-

“On beach front sites, no structure should be sited closer than one hundred feet (100 ft.) (30.0m) from the High Water Mark (H.W.M)”. The Defendant also breached this policy and regulation.

- (e) These breaches of regulations and policy invalidate the decision to grant permission and render it null and void.

## **GROUND 11**

- (a) Over the years, the Town and Country Planning Department / Chief Town Planner / Minister responsible for Town and Country Planning has applied and enforced the policy



and regulation that beach front hotels or tourist accommodation are to be a maximum of five (5) storeys in height, while non-beachfront tourist accommodation is to be a maximum of seven (7) storeys in height.

- (b) Over the years, when applicants have applied for planning permission to construct hotels or tourist accommodation more than five or seven storeys in height their applications have been consistently denied on the ground that such structures would negatively impact the visual amenity of the locale.
- (c) The Defendant – as a public authority of the Government of Barbados – was and is required by law to act in accordance with the principles of National Justice, and to also act without double standards, bias or inconsistency, and in a manner that is fair and equal to all parties.
- (d) The Defendant was therefore not at liberty to apply one policy and one set of principles or criteria to Applicants other than Vision Developments Inc. and their applications to construct hotels higher than five or seven storeys, and a different policy / set of principles and criteria to Vision Developments Inc. and its said Application to construct a 15 storey hotel.
- (e) By granting Visions Development Inc. permission to construct a 15 storey beachfront hotel the Defendant did unlawfully apply a different policy / set of principles or criteria and did act in a manner that was, inter alia, in breach of the principles of Natural Justice; characterized by the application of double standards; inconsistent; unfair; unequal; and unlawful.
- (f) As a result of the foregoing the said decision to grant permission to construct a 15 storey hotel is invalid and null and void.

## **GROUND 12**

- (a) The Claimant is a person aggrieved by the actions of the Defendant in making a decision to grant the said permission to Visions Development Inc. to erect the said hotel. As a result, by virtue of Sections 72 and 69 of the **Town and Country Planning Act**, CAP 240 of the Laws of Barbados, the Claimant is entitled to make the Application herein and to claim the remedies claimed herein.
- (b) In addition, as a Citizen of Barbados with an interest in preserving the physical, social and cultural environment of his country, and as a user of the beach contiguous and adjacent to the said 15 storey hotel, the Claimant is a person whose interests are adversely affected by the decision of the Defendant to grant the said permission, and the Claimant is therefore entitled under Sections 3, 4, 5, 6 and 7 of the **Administrative Justice Act**, CAP 109 B of the Laws of Barbados to make an Application to this Honourable Court for Judicial Review of the administrative acts, omissions and decisions of the Defendant.

**The particulars of the facts and matters relied upon in support of the aforesaid grounds are as follows:**

1. On the 30<sup>th</sup> of March 2015 a company known as Vision Developments Inc. applied to the Town and Country Planning Department / Chief Town Planner / Minister responsible for Town and Country Planning for planning permission to erect a hotel on beach front land at Bay Street in the parish of St Michael, and the said application was registered at the Town and Country Planning Department as Application Number 0445/03/2015B.

proposed to build its 15 storey hotel and whose user of the beach would be adversely affected if the said hotel is permitted to be erected. Furthermore, the Defendant granted the said permission without having consulted the residents of the residential districts and housing areas that are in close proximity to the site of the proposed hotel and who would be affected by the said hotel if it is permitted to be constructed.

30. The policy of the **Town and Country Planning Act**, the **Physical Development Plan**, the **Chief Town Planner**, and the **Town and Country Planning Department** is expressed in the latter's "**Applicant's Handbook And Guide To Town Planning**" (2<sup>nd</sup> edition). The grant of permission to erect a 15 storey hotel is therefore clearly in breach of these policies and regulations.

I David Andre Comissiong certify that all facts set out in this Claim Form are true to the best of my knowledge, information and belief.

Dated the 22<sup>nd</sup> day of March 20 17

David Comissiong  
Claimant's Signature

**NOTICE TO THE DEFENDANT**

The first hearing of this Claim will take place at the Supreme Court situate at Whitepark in the City of Bridgetown on the 9<sup>th</sup> day of May 20 17, at 9:30 a.m./p.m.

If you do not attend at that hearing, judgment may be entered against you in accordance with the Claim.

If you do attend, the judge may

- (a) deal with the claim; or
- (b) give directions for the preparation of the case for a further hearing.

Form 2 – Cont'd

(Rules 8.1(5), 27.2 and 59.4(2))

A Statement of Claim or an affidavit giving full details of the claimant's claim should be served on you with this Claim Form. If this has not been done and there is no order permitting the Claimant not to serve the Particulars of Claim or affidavit, you should contact the Registry immediately.