

PRESS RELEASE

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Runaway Bay, Jamaica

VICTORY FOR ENVIRONMENTAL GROUPS IN PEAR TREE BOTTOM CASE

In a landmark case for Jamaica's environmental movement, high court judge Justice Bryan Sykes has ruled in favour of Northern Jamaica Conservation Association (NJCA), Jamaica Environment Trust (JET) and four individuals in the Judicial Review case concerning the granting of an environmental permit for part of the planned 1,918-room Bahia Principe hotel in Runaway Bay.

On Tuesday, May 16th Justice Sykes quashed the environmental permit granted to Hoteles Jamaica Piñero Limited (HOJAPI) for Phase One of the hotel and ordered that the National Environment and Planning Agency (NEPA) reconsider the application for the project.

He ruled that NEPA and the Natural Resources Conservation Authority (NRCA) had not complied with the legal requirements of the decision-making process and had therefore acted unfairly in granting the environmental permit.

However, in response to a request from the NRCA lawyers, the judge agreed to a 21-day stay on the revocation of the permit to allow the Respondents to prepare an appeal if they so choose.

In delivering his judgement, Justice Sykes found that NEPA had failed to consider all of the relevant environmental information, including a critical marine ecology report that was missing from the Environmental Impact Assessment (EIA). He said that given the undisputed high ecological value of the resources of Pear Tree Bottom, the absence of the marine ecology report was of "tremendous significance" to the decision-making process which the court was being asked to examine.

The judge agreed with the Applicants that the public consultation process had been flawed and that NEPA and the NRCA had failed to respond to the legitimate concerns and expectations of stakeholders. He found that NRCA had acted unfairly, stating that "unfairness is an abuse of power."

"The difficulty for me," he said, "was that it was known to both NEPA and NRCA that the EIA was incomplete. How can you consult without giving the public full, complete and accurate information?"

Justice Sykes pointed out another serious flaw in the consultation process: the fact that NEPA and the NRCA had ignored the recommendations of the Water Resources Authority (WRA), another government agency with which they were required to consult, before issuing the permit on July 26, 2005.

The WRA had communicated to the NRCA that they found the proposed sewage disposal method, deep well injection, completely unsatisfactory and that the EIA failed to specify an acceptable method for sewage treatment for the hotel. The WRA also recommended increasing the set-back requirements for the hotel in light of the recent Asian tsunami experience. The judge said he could find no reason why the advice of the WRA had not been considered.

The judge was extremely critical of the EIA, describing it as "really poor." He pointed out serious deficiencies in the empirical work which NEPA itself had recognised, especially where environmental data were required to be assessed over time, such as water quality. He found that there had been insufficient field assessment of the flora and fauna, reliance on old, outdated information

and on anonymous and unverifiable sources, and no evidence that the EIA had actually assessed the coral reefs or the potential impact of the development on them.

In the opinion of the judge, the defective EIA had important implications for the monitoring programme: “How can you monitor what you don’t know is there?” he asked.

With respect to the Respondents’ claim that a delay in filing the suit might have affected the rights of third parties, namely the developers, the judge found that there had been no undue delay in the filing of the suit within 10 weeks of the issuance of the permit, given the burdensome task of the Applicants to present a clear case based on detailed evidence. He commented that the suit was brought by two non-profit organisations, which were “not awash with funds” and which needed to consult their Boards and seek costly legal advice before proceeding.

Furthermore, the judge said that no evidence had been presented to the court indicating prejudice to a third party or that quashing the permit would be detrimental to good public administration.

“No-one can say that adhering to the rule of law is bad public administration,” he said.

Under the NRCA Act, the NRCA is mandated to “take such steps as are necessary for the effective management of the physical environment of Jamaica so as to ensure the conservation, protection and proper use of its natural resources.”

Justice Sykes commented that given the importance of protecting the environment, decision-making in cases such as this should attract a high degree of scrutiny and that he had no choice but to give precedence to the rule of law.

The judgement was delivered on Tuesday morning in a session lasting almost three hours. Several members of the press were present along with representatives of NJCA and JET.

Justice Sykes explained that although the written judgement was not quite complete he had brought forward the ruling in light of the urgency of the case. He commended counsel on both sides for the high quality of the research and documentation they had provided.

The Applicants in this case were represented by C. Dennis Morrison, QC, and Julianne Mais-Cox of DunnCox Ltd., and the Respondents were represented by Patrick Foster and Symone Mayhew of the Attorney General’s department.

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