



BRIEFING SUMMARY RE THE JUDICIAL REVIEW FILED BY THE JAMAICA ENVIRONMENT TRUST AGAINST THE NRCA AND NEPA RE THE ROADWORKS ON THE PALISADOES STRIP

Statement from JET: JET does not regard the filing of a judicial review action as a battle with a winner and a loser. JET believes that asking the courts to review the actions or decisions of a state agency leads to better democratic processes and more effective regulatory outcomes. JET hopes that NEPA and the NRCA will embrace the findings of the court as positive steps in building environmental jurisprudence in Jamaica and see this as an opportunity to reform its regulatory procedure for permitting developments.

Main facts: The Palisadoes strip is part of the Palisadoes/Port Royal Protected Area, declared under Jamaican law in 1998. It is also a wetland of international importance under the Ramsar convention. It contains the main road to the Norman Manley International Airport, and many important natural resources – sand dunes, wetlands, coral reefs, sea grass beds. The strip was damaged by a series of storms and a decision was taken to protect the very narrow part of the strip in 2006/2007. A project was done by Cuban Engineers to build 310 metres of revetment, dredge sand from an inshore source and replenish the sand dunes and this was the subject of an EIA and a public meeting in 2007. The dunes were to be revegetated afterwards, but this was never done. Then in 2010, there was an announcement that this project was going to be expanded to include a four lane highway of 4 km, two seawalls on both sides of the Palisadoes strip and removal of mangroves on the harbour side. Beach licenses were given by NEPA for the sea walls and the coastal reclamation works, an environmental permit for the wetland modification (harbour side) and a permit for storage of petroleum. Subsequently, the public was told that the road would not be four lanes, but two lanes, with two shoulders.

JET's contentions:

- 1) That the revised project should have been the subject of a new public consultation before permits/licenses were issued.
- 2) That the work on the beach itself (sand dune destruction and vegetation clearance) should have been the subject of an environmental permit, as the beach licence dealt with the foreshore only.
- 3) That the work on the Harbour side (boardwalk, mangrove removal and reclamation) constituted "Port and Harbour development" and should have required an environmental permit.
- 4) That the road construction required an environmental permit as it constituted "major road improvement works including widening the road to 4 lanes".

What JET asked the court to do:

- 1) Make a ruling on the public consultation process – should all the environmental information have been disclosed and a new public meeting been held for the expanded project, and was it acceptable that the public meeting that was held took place after permits had been issued and work had commenced.

- 2) Make a ruling on the permits/licenses that were issued by NEPA. JET felt that the work on land should have been the subject of an environmental permit, as the work on Palisadoes was either (a) Port and Harbour Development; (b) major road improvement, including the construction of a road of four or more lanes; and/or (c) excavation, clearing and reclamation of a beach. These three types of activity all require environmental permits under the NRCA Act.

JET'S legal action was never an attempt to stop the construction of the road.

What the judge found:

- 1) That NEPA breached the legal standard for consultation and breached the legitimate expectation that all environmental information relating to the development of the Palisadoes would be disclosed to the public and JET before approval was granted.
- 2) That the beach licenses issues were sufficient to cover the work on land, particularly as a dune restoration plan had been required under the earlier project.
- 3) The Judge did say that if the road does turn out to be four lanes, it would require an environmental permit, but she accepted the evidence of the CEO of NEPA that it would not be four lanes.

Learning for JET:

- 1) That where the NEPA and NRCA have embarked on a consultation process with the public concerning a development which is subsequently modified, the agencies should re-consult the public and disclose all environmental information.
- 2) The definition of a beach is critical. Currently there is no definition in the Beach Control Act (BCU), but the judge did say that under the Beach Control Act, NEPA could include any adjoining land in the beach license if there was a public interest to be upheld. This has implications for the Blue Lagoon beach and the Pellew Island development, to give two examples, as NEPA has maintained in both cases that the BCU concerns only the foreshore.
- 3) The term "Port and Harbour Development" must include maritime activity.
- 4) Significant changes to any existing project that has previously been the subject of an EIA and public meeting must be communicated to the public and interested parties before permits are issued and work started.
- 5) NEPA does not have to circulate documents such as seagrass replanting plans as part of the public process.

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