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Taman Rimba Kiara:¹ A Welcome Decision in Public Administrative and Planning Laws

“The Courts constitute the channel through which His Majesty’s justice is dispensed to his people and are accordingly the bastion of their rights. The Courts, when faced with such clear violations by a public authority, must therefore necessarily be the ultimate bulwark against the excesses of the executive.”²



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In a recent landmark decision, the Court of Appeal quashed the development order (**DO**) issued by the mayor of Kuala Lumpur (**KL mayor**) for a proposed mixed commercial development on part of the land that the Taman Rimba Kiara public park sits on (**Subject Land**). The proposed development was to be undertaken by a private developer³ and Yayasan Wilayah Persekutuan⁴ in the form of a joint venture.

The Court of Appeal held that the DO was tainted with, among others, procedural improprieties, illegality and unreasonableness.

This update sets out several material points discussed in the Court of Appeal decision which impact the public administrative and planning laws in Malaysia.

Locus standi

The appellants consisted of, among others, the residents’ association, management corporations and joint management body of properties in the Taman Tun Dr Ismail (**TTDI**) township.

The High Court found that the appellants lacked *locus standi* to initiate these judicial review proceedings. Such a finding was primarily grounded on the respondents’ contention that there

¹ *Perbadanan Pengurusan Trellises & 9 Ors v Datuk Bandar Kuala Lumpur & 3 Ors* [2021] CLJ JT (2). At the time of publication of this update, it has been reported that the respondents have filed an application for leave to appeal to the Federal Court: Hafiz Yatim, “Taman Rimba Kiara case goes to Federal Court”, *The Edge Markets* (25 February 2021) <https://www.theedgemarkets.com/article/taman-rimba-kiara-case-goes-federal-court>

² *Mak Sik Kwong v Minister of Home Affairs, Malaysia* [1975] 2 MLJ 168

³ Third respondent

⁴ Second respondent

exists a twofold *locus standi* test: (a) threshold *locus standi* as provided under O 53 r 2(4) of the Rules of Court 2012; and (b) substantive *locus standi* as provided under r 5(3) of the Planning (Development) Rules 1970 (**Planning Rules**).

The Court of Appeal disagreed with the High Court and held that the appellants had the requisite *locus standi* to initiate these judicial review proceedings as they would be adversely affected by the DO. The Court of Appeal held, among others, that:

- (a) In determining the issue of *locus standi*, the correct test is the “adversely affected” test as set out in O 53 r 2(4) of the Rules of Court 2012.⁵ The rule does not require an applicant to further establish his right under specific law before he is entitled to initiate judicial review proceedings.
- (b) To pass the “adversely affected” test, the applicant has to show a real and genuine interest in the subject matter.⁶
- (c) The KL mayor, as a local authority, owes a duty at common law to notify and hear objections from adjoining landowners in order to be regarded as having acted fairly in making his decision.⁷
- (d) Management corporations and joint management bodies, being proprietors of the common property in the respective properties located in the immediate vicinity/neighbourhood of the proposed development, have interests which would be adversely affected by the proposed development.

Strict adherence to planning rules

On the facts of this case, the Court of Appeal held that the DO was tainted with procedural impropriety as the KL mayor had failed to comply with r 5(8) of the Planning Rules, which requires him to convey to the relevant persons (in this instance, the appellants) a written decision on the planning permission application and the objections raised.

The Court of Appeal reaffirmed that the procedural requirements of the Federal Territory (Planning) Act 1982 and the Planning Rules must be complied with, failing which the development order already granted is liable to be quashed.⁸

Duty to give reasons for decision

The Court of Appeal, in endorsing the notion laid down in *Rohana bte Ariffin*⁹ that a “*reasoned decision can be an*

⁵ See paras 75 and 90 of the grounds of judgment

⁶ See para 77

⁷ See para 78

⁸ See paras 109 to 111. See also *Datin Azizah Abdul Ghani v Dewan Bandaraya Kuala Lumpur & Ors & Anor Appeal* [1992] 2 MLJ 393

⁹ *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487

additional constituent of the concept of fairness”, reaffirms the duty on the part of public decision-making bodies to give reasons for their decisions. This is also in line with an earlier decision in *Uniqlo*,¹⁰ where the Court of Appeal confirmed that the Director General of Customs and Excise has a duty to give reasons for its decision as a public decision-making body.

The Court of Appeal also clarifies that the absence of an express provision in any statute requiring the decision-maker to give reasons does not mean that the duty does not exist, unless and until the statute specifically states so.

In addition, the Court of Appeal reminds that the courts should be examining the reasons which were given contemporaneous with the communication of the decision and not the clarifications or elucidations that subsequently emerged in the affidavits filed after the commencement of legal proceedings.¹¹

Binding effect of KL Structure Plan/Local Plan

The Subject Land has been demarcated as a public open space, recreational and sports area, green area and city park under the KL Structure Plan. On the other hand, the KL Local Plan has demarcated Taman Rimba Kiara as a city park and public open space with zero development intensity.

In affirming the legal binding effect of the KL Structure Plan/Local Plan, the Court of Appeal found, among others:

- (a) The KL Structure Plan is a carefully drafted and considered statement of policy. It concerns “*the capital city of the Nation, not just about the planning of its development, but its proper planning*”.¹²
- (b) The KL mayor is bound to have regard to the comprehensive development plan, structure plan and local plan in its consideration of any application for planning permission. These plans are not only specific requirements of the law, but also material considerations against which the application for planning permission had to be assessed under s 22(4) of the Federal Territory (Planning) Act 1982.¹³
- (c) Any departure from the structure plan must be for good reasons and such reasons have to be properly explained in writing at the material time of decision.¹⁴

Conflict of interest

As the KL mayor is a member of the Board of Trustees of

¹⁰ *Uniqlo (Malaysia) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2020] 9 CLJ 521

¹¹ See para 124 of the grounds of judgment

¹² See para 142

¹³ See para 154

¹⁴ See para 155

Yayasan Wilayah Persekutuan, the Court of Appeal held that the commercial interest of Yayasan Wilayah Persekutuan, as evidenced by the terms of the joint venture, was sufficient to meet the test of conflict of interest, thus tainting the DO granted by the KL mayor himself.¹⁵

Conclusion

This is a welcome decision that certainly upholds the rule of law and instils public confidence in the judiciary that the courts will not shy away from holding public decision-makers accountable for their actions and their duty to act transparently. It also goes to show that the courts, as the last bastion to check on administrative oppression, will not hesitate to strike down any arbitrary exercise of power by public bodies by reason of its perversity.

Additionally, the facts of this case show that the swift action by the appellants in invoking appropriate objection channels and ensuring timely follow-ups with the public authorities played a part in the successful litigation. Therefore, if you have cogent grounds to object to any proposed developments surrounding your neighbourhood, it is prudent to seek timely legal advice so that a comprehensive legal strategy could be devised at the earliest opportunity.

Ho Ai Ting and Wong Eu Ca Matthew

If you have any queries pertaining to this update, or on how to tackle issues relating to town and country planning, please contact associate Wong Eu Ca Matthew (wec@lh-ag.com) or team partner **Ho Ai Ting** (hat@lh-ag.com). For detailed analysis of the Court of Appeal decision in *Uniqlo*, please refer to our Tax team alert, "[Duty of Public Decision-Making Bodies to Give Reasons: Does This Apply to the Tax Authorities?](#)"

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¹⁵ See para 182