



Sunrise v Sunway: **Significance of the FC decision**

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PLANNING LAW: CONCEPTUAL CONTEXT

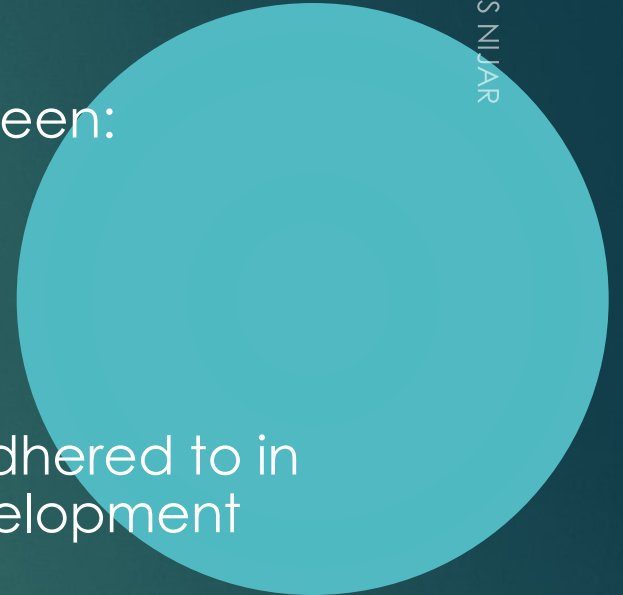
- ▶ Town & Country Planning Act 1976: comprehensive law/code for planning
- ▶ Covers 2 ASPECTS:
- ▶ Planning development (PD): Part III
- ▶ Planning Control (PC): Part IV
- ▶ For PD: local planning authorities duty to prepare and submit development plans – Structure Plan (SP) & Local Plan (LP). This formulates policy and general proposals for the development and use of the land in their area. Elaborate process.
- ▶ For PC: planning permission is required for any development of land (maybe subject to exceptions)

PD: public participation (PP)

- ▶ Crucial for the production of PD: including any subsequent amendments
- ▶ Crucial in the application process for planning permission
- ▶ Rationale: because it is a part of a democratic right to regulation and planning of land development: [204]

Contd: Structure Plan

- ▶ Structure Plan(SP) forms an environmental contract between:
 - ▶ 1. the planning authority
 - ▶ 2. the local council; and
 - ▶ 3. The community.
- ▶ Embodies a promise by the Council: objectives in plan adhered to in regulating private development; AND not allow any development that conflicts with the plan materially. Trellis: [148] (c)
- ▶ Once gazetted, must adhere to it “slavishly”.
- ▶ Any amendment must got through the process
- ▶ If wish to depart: justify for good reasons.
- ▶ Mere policy with no statutory force? No: [204]



Contd: Local Plan

- ▶ Must formulate soon after SP gazetted
- ▶ Must follow SP
- ▶ No planning permission if
 - ▶ contravene any provision of the development plan: s 22(4);
 - ▶ Contravene any direction given by the State Planning Committee (SPC).

Federal-State integration: NPPC

- ▶ For certain type of planning permission, the SPC must refer to the National Physical Planning Council (NPPC) for its advice. This “ensures uniformity of law and policy in Malaysia”: **[42]** Matter of public interest.
- ▶ This includes development affecting hill tops or hill slopes in an area designated as environmentally sensitive in a development plan: **s 22(2A); s 10(4)**. Amendments of 2001 to TCPA: show TCPA play a prominent role in environmental protection: **[46]**.
- ▶ SO PLANNING CONTROL PROCESS INVOLVES 3 TIERS:
 - ▶ The local council;
 - ▶ The State Planning Committee; and
 - ▶ A Federal body comprising Federal and State officers – **NPPC**
It comprises the PM, and other high ranking Ministers; as well as the Chief Ministers of the States: **s 2A**.

What the SPC/MBPP did: 1

- ▶ Followed the Pelan Dasar and not the Structure Plan;
- ▶ Created Special Projects Guidelines;
- ▶ Relied on these Guidelines to approve the Sunway's development as it was required merely to be located within the area for housing development under the interim Zoning Plan (or Pelan Dasar).
- ▶ Relied exclusively on the direction of the SPC to approve.
- ▶ Said the entire approval process involving the 3 tiers need not be looked at.
- ▶ Did not refer to the NPPC for its consideration and advice.

WAS SPC/LPA right or wrong?

- ▶ DEFIED THE CENTRAL THRUST OF THE PENANG STRUCTURE PLAN (SP)
- ▶ ABRIDGED THE SP
- ▶ RULE BY DECREE/FIAT/
- ▶ UNDERMINED THE WHOLE PROCESS
- ▶ SPC DELEGATED FUNCTION TO LPA
- ▶ LPA FOLLOWED 'DIRECTIVE': BLINDLY?
- ▶ IGNORED THE CRITICAL PUBLIC PARTICIPATION ELEMENT



TAKEAWAY OF THE FEDERAL COURT DECISION

THE FEDERAL COURT DECISION [1]: PLANNING CONTROL CONCEPT

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- ▶ MUST ACT IN ACCORDANCE WITH THE DEVELOPMENT PLAN:
fundamental
- ▶ PUBLIC PARTICIPATION: fundamental
- ▶ LARGER ISSUES: SUSTAINABLE DEVELOPMENT; ENVIRONMENT
- ▶ LOOK AT ENTIRETY OF APPROVAL PROCESS
- ▶ LPA NOT BLINDLY FOLLOW SPC
- ▶ NOT FETTER DISCRETION OF LPA
- ▶ DEVELOPMENT IMPERATIVE & ENVIRONMENT ETC PROTECTION

THE FEDERAL COURT DECISION [2]: SPECIFIC ISSUES

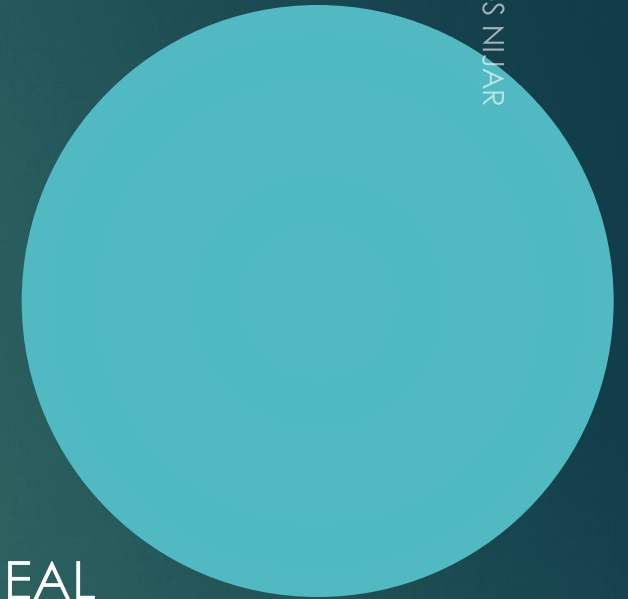
- ▶ PUT IN CONTEXT OF: FEDERAL STATE INTEGRATION
- ▶ PUBLIC INTEREST BALANCE
- ▶ NLC v PLANNING REGULATORY IMPERATIVE
- ▶ OBJECTIONS AND REAL CONSIDERATION
- ▶ DUTY TO GIVE REASONS
- ▶ DEMOCRATIC PROCESS
- ▶ FUNDAMENTAL ELEMENTS

ROLE FOR VIGILANCE

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- ▶ STRUCTURE PLAN REQUIREMENTS
- ▶ DK3 L6
- ▶ DK3 L7
- ▶ DK3 L8
- ▶ REFER: SUNRISE AT [28] [29] [30]
- ▶ “EDU-ACTION”: TRANSLATING SOCIAL AWARENESS INTO REAL COMMITMENT
- ▶ EXAMPLE OF ROUND TABLE DISCUSSIONS WITH KL MPs: HOLISTIC & INTEGRATED APPROACH WITH 52 RAs

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▶ THANK YOU!

Rule by decree - link

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- ▶ Alteration of SP: expediency
- ▶ Undermined the SP
- ▶ Obvious illegalities
- ▶ Wilful refusal/delay to draft LP?



Undermined process

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- ▶ Democracy
- ▶ Purpose and function of planning control
- ▶ Public participation
- ▶ Developer's charter
- ▶ Open to abuse: no real check and balance?
- ▶ Compromised independence of LPA

