

Civil society groups express support for Sungai Ara residents' case against Sunway Hills project on environmentally sensitive hills

Several civil society organisations in Penang have come together in a show of solidarity and support for the Sungai Ara residents, who have filed an appeal to the Federal Court, in their fight against the Sunway City project which is on environmentally sensitive hill lands.

The Federal Court hearing will take place on 25th and 26th May, 2022, and is of significant public interest, as it involves aspects of planning law and the protection of hill lands and hillslopes from development, not only in Penang but also in the country.

Over the years and in recent times, we have witnessed landslides and hillslope failures involving the loss of innocent lives, human injuries and damage to property in Penang and all over the country.

The Sunway Hills project by Sunway City in Sungai Ara involves housing development on sensitive hill land, that is land with more than 250 feet (76 metres) above sea level and a gradient exceeding 25 degrees.

The residents from Sunrise Garden Condominium and a landed property who live at the foothills of the proposed project have brought this appeal to the Federal Court due to environmental and safety concerns.

Sunway City proposes to construct 600 units comprising high-rise apartments and bungalows on hill lands covering 80 acres, approximately 43% of which are on slopes exceeding a gradient of 25 degrees.

On 20 November 2015, the Appeals Board under the Town and Country Planning Act (TCPA) 1976, upheld the objections by the residents against the approval of the project and the grant of planning permission by the Majlis Bandaraya Pulau Pinang (MBPP).

Sunway City had argued that the MBPP had granted planning permission for the project properly because the proposed development is a 'special project.' The residents argued that the sensitive hill lands are unsuitable for the development proposed.

The Appeals Board ruled that the MBPP was wrong in granting the approval, as it had failed to consider properly that (in this case), the primary objective of the Penang Structure Plan 2020 is to preserve hill lands; and only very limited and justifiable exceptions were allowed as 'special projects', which justification was lacking in the Sunway project.

The Penang Structure Plan 2020 was gazetted in 2007 and states that hill lands more than 250 feet (76 metres) above sea level and/or with a gradient exceeding 25 degrees cannot be approved for development, except in cases where they involve 'special projects'. The Structure Plan however did not define what are 'special projects'.

The definition and the guidelines for 'special projects' were approved by the Penang state government in 2009. How the guidelines are to be interpreted is the crux of the dispute in the Sungai Ara residents' case.

Instead of remaining neutral, the MBPP with the support of the Penang State Government has sided with Sunway in challenging the Appeals Board's decision.

In 2017, Sunway City and MBPP filed a judicial review application to the Penang High Court against the decision of the Appeals Board; and on 29 May 2017, the High Court decided in favour of Sunway City and the MBPP.

In June 2017, the Sungai Ara residents filed an appeal to the Court of Appeal, challenging the decision of the High Court.

However, the Court of Appeal delivered its decision only on 21 May 2021 (more than two years after the appeal was heard), and agreed with the High Court and ruled in favour of Sunway City.

Hence, the residents have appealed to the Federal Court.

We, as concerned groups, express our solidarity and support for the Sungai Ara residents in their appeal, as this case has serious implications not only for the immediate residents living in the vicinity of the project, but also for all citizens of Penang and Malaysia who will be affected by development projects in environmentally sensitive areas, especially on hill lands and highlands.

Since the decision of the Federal Court will also deal with planning law in the country on the issue of Structure Plans and Local Plans, the implications of this case will be significant for all citizens on how planning permission for projects is granted, particularly as regards environmentally sensitive areas such as hill lands.

Also of critical importance is the issue of how the MBPP can challenge a decision of the Appeals Board set up under the TCPA.

These are serious matters of public interest, which require the attention of all concerned groups and members of the public.

We laud the spirit and courage of the Sungai Ara residents in spearheading this important appeal to the Federal Court, despite the financial challenges they are facing.

Their struggle in the public interest should be supported for a better environment and a better Penang and we will watch with utmost interest the outcome of the Federal Court proceedings.

This statement is endorsed by:

Name	Organisation
1. Mohideen Abdul Kader	Consumers' Association of Penang
2. Mageswari Sangaralingam	Sahabat Alam Malaysia
3. Khoo Salma	Penang Forum
4. Zulfikar Aziz	Tanjung Bunga Residents Association
5. Dr. Kam Suan Pheng	Penang Hills Watch

¹ The Appeals Board under the TCPA is a body set up to hear objections from adjoining land owners of proposed projects on why planning permission for such projects should not have been given.

² The Court of Appeal (Mahkamah Rayuan) is different from the Appeals Board (Lembaga Rayuan). The Court of Appeal can hear appeals from the decisions of the High Court, and is one tier below the Federal Court (Mahkamah Persekutuan).