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Letter to the Editor

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State planning authorities had no lawful authority to grant planning permission

Sahabat Alam Malaysia (SAM) refers to the decision of the Court of Appeal on 30 June 2026 concerning the Penang South Reclamation Project (PSR) and the response by the Penang state government to media reports yesterday. The following is the excerpt from the Court of Appeal judgement, paragraph 49, p. 58.

“...we dismiss this Appeal and affirm the High Court’s Decision on either one or both of the following grounds:

- (1) the 1st and/or 2nd Respondents^[1] had no power to grant the PP^[2] (Reclamation); and/or
- (2) the JRA^[3] had been filed beyond the Three-Month Time Period [O 53 r 3(6) RC] and there was no “good reason” for the Court’s EOT^[4] to be granted pursuant to O 53 r 3(7) RC^[5].”

We would like to stress that there has been no misrepresentation of the decision as reported on 30 June 2026 and deeply regret the Penang State Government’s characterisation that this has been the case.

For the record, on 29 December 2023, seven fishers led by Zakaria Ismail, together with SAM and Jaringan Ekologi dan Iklim (JEDI), filed a judicial review at the Penang High Court. The case challenged the planning permission given on 21 August 2023 for the PSR project by the Penang State Director of Town and Country Planning, upon the approval of the Penang State Planning Committee.

The case raised serious concerns that the project was pushed through without following statutory planning procedures under the Town and Country Planning Act 1976 (TCPA 1976). This included, among others, the failure by the State Planning Committee to consult the National Physical Planning Council (NPPC) prior to the grant of planning permission by the Penang State Director of Town and Country Planning.

On 11 July 2024, the High Court dismissed the case mainly on the basis that the judicial review was filed out of time, and that the planning permission for the reclamation project was said to have been properly issued in accordance with the TCPA 1976.

We appealed to the Court of Appeal in this regard. On 30 June 2026, the Court of Appeal dismissed the appeal but gave a very different reasoning from the High Court.

The Court of Appeal clearly stated that the state planning authorities, specifically the State Director of Town and Country Planning and the State Planning Committee, had no power to grant planning permission for the reclamation works. This is because according to the Court of Appeal, the seabed and territorial waters fall under the Federal Government until the reclamation is completed.

This clearly contradicts the decision of the High Court. The High Court held that the approval given was lawful, but the Court of Appeal held that the authority approving the planning permission had no power to do so. The only point both courts agreed on was that the case was apparently filed out of time.

The Penang State Government's media response is thus misleading and is an attempt to confuse the public on what was actually decided.

The Court of Appeal did not say that planning permission was not needed for the PSR project as claimed by the Penang State Government. Nor did the Court of Appeal refer to approval of the Penang State Structure Plan or the NPPC in deciding the question of jurisdiction to grant planning permission for reclamation carried out in federal waters.

Thus, in view of the Court of Appeal's finding that the Penang State Planning Director and the State Planning Committee had no authority to grant planning approval, there is in fact no valid planning permission for the PSR project.

The project therefore should not proceed, and we urge the Federal Government to step in urgently to resolve this matter and ensure the laws and procedures are complied with.

Mageswari Sangaralingam
Honorary Secretary
Sahabat Alam Malaysia

[1] The 1st and or 2nd Respondents are the Director of Penang State Planning Department (PlanMalaysia) and the Penang State Planning Committee

[2] Planning Permission

[3] Judicial Review Application

[4] Extension of Time

[5] Rules of Court