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## Constitutional rights 'at stake' in appeal over \$500m project

By NEIL HARTNELL  
Tribune Business Editor

THE Government "pursued a deliberate policy of non-consultation" with Guana Cay residents over the \$500 million Baker's Bay Golf & Ocean Club project, the development's opponents are set to argue before the Privy Council, with the constitutional right to freedom of movement within the Bahamas alleged to be at stake.

The Save Guana Cay Reef Association, in its appeal to the highest court in the Bahamian judicial system, alleged that the then-Christie Cabinet, acting in the guise of the National Economic Council (NEC), had already decided to sign the Heads of Agreement with the developers prior to consultation

- \* Baker's Bay opponents claim government pursued 'deliberate policy of non-consultation' with Guana Cay residents
- \* Association alleges \$250k public park 'derisory compensation' for loss of beach and public land to private members club

with stakeholders taking place.

The appeal, the final bid to halt the development by Arizona-based Discovery Land Company, drew upon the project's Environmental Impact Assessment (EIA) for evidence to support this assertion.

It noted that at page 2,514, the EIA said: "Without an official approval of the [development] from the Office of the Prime Minister, PPS [the developers] has not been allowed to publicly present information about the development plans and solicit input from the community."

This theme was repeated at page 2,585 of the EIA, which allegedly stated: "At the time of EIA preparation [the developers] have not had the opportunity to begin a public consultation process. Public discussion of the project has been discouraged prior to final approval through the Office of the Prime Minister."

The Association's appeal is also drawing on an e-mail sent by Dr Kathleen Sullivan-Seeley, the EIA's author, to its own

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consultant, Dr Michael Risk, which was sent on January 23, 2005.

It allegedly said: "I agree there is a big information issue (as you know the developers can not meet independently with the community until after the Heads of Agreement is signed, so there are some issues with the government review process). My position (as a Bahamian resident) is that there are some severe environmental problems already on the off-shore cays in Abacos. Development is intense, but needed by the small, cash-strapped Gov't of the Bahamas."

As a result, the Association is alleging in its appeal: "The inference to be drawn from this is that the NEC pursued a deliberate policy of non-consultation and took the decision to enter the Heads of Agreement without taking into account the concerns of the local residents."

"This total and deliberate failure to consult underscores the Appellants' main submission under this head of review that relevant considerations were left out of account."

The Association, whose appeal is due to be heard by the Privy Council from July 6-9, 2009, is also alleging that the decision to lease Crown and Treasury land to the Baker's Bay project was against the public interest, because by

doing so Bahamians will purportedly be barred from accessing land on the northern end of Guana Cay.

Alleging that the leases were 'ultra vires' or illegal, the Association's appeal claimed: "In the present case, the rights at stake are those enshrined in Article 25 of the Constitution of the Commonwealth of the Bahamas. It is submitted that they are clearly infringed in this case."

"Article 25 provides that no person is to be hindered in his freedom of movement within the Bahamas without his consent, except to the extent that the hindrance is reasonably required in the interests of (inter alia) town and country planning, and where the restriction is shown to be reasonably justified in a democratic society."

The appeal is alleging that the Government and developers had "clearly failed to provide any reasonable justification for the infringements of Article 25 rights that the Heads of Agreement represents in allowing this exclusive members-only gated community on the island, and in thereby prohibiting Bahamians from accessing beaches and



FRED SMITH, the Callender's & Co attorney and partner who is the Bahamian attorney for the Save Guana Cay Reef Association...

public lands traditionally accessed and used for hunting, fishing, recreation and traditional gatherings.

"As such, the decision to

approve the development to the extent that it interfered with Bahamians' rights to freedom of movement in the Bahamas was unreasonable and ultra vires...."

"The leasing of these lands to private foreign-owned developers for private profit, causing risk of irreversible environmental damage, removing local residents' traditional livelihoods (crabbing and fishing) and inhibiting local residents' freedom to access public areas of the island and breaching their Article 25 right to freedom of movement on the island cannot, on any view, be described as in the public interest."

The Association is also challenging the purported economic benefits from the Baker's Bay project, arguing that as a private members' club the development would be "off limits" to ordinary Bahamian.

It is also alleging that the clauses in the Heads of Agreement, requiring the developers to purchase supplies and materials from Bahamian firms, provided they were available and price competitive, and to employ up to 200 Bahamians and "make every effort" to fill all jobs with Bahamians, were

"toothless" and "worthless".

The Association alleged that given the scale of Baker's Bay, "large numbers of temporary workers from abroad must have been required, and with high rates of employment in the Abacos the demand was unlikely to be fulfilled by Bahamians".

"The Heads of Agreement provides for the developers to construct a solid waste disposal facility, a water desalination plant, a community center on Treasury Land (to house police, fire, medical and customs and immigration services) and to devote five to eight acres of Crown and private land to a park, which would allow the public access to 500 feet of frontage on the Sea of Abaco," the Association is alleging.

"With the exception of the public park these are all services necessitated by the development itself. It is submitted that a five to eight-acre park to be developed on land already in public hands, allowing 500 feet of beach access at a cost to the developers of \$250,000 is derisory 'compensation' in the context of a \$500 million development that will cause the loss of acres of beach and public lands access."

### NOTICE

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