

VIRGIN ISLANDS ENVIRONMENTAL COUNCIL

Sea Meadow House (Tobacco Wharf), Road Town, Tortola, British Virgin Islands

PRESS RELEASE:

2011.08.15

On the Court of Appeal Judgment in VIEC v AG and Quorum (BVI) Ltd

The Virgin Islands Environmental Council is satisfied that the Court of Appeal judgment handed down on 12th August 2011 upheld the finding that the judicial review could have proceeded even though it failed to join the Minister of Planning as a defendant. However, we are very disappointed by the finding that Hans Creek is not legally a protected area.

This finding has numerous negative implications. Firstly, it effectively invalidates the entire fisheries protected area system in the BVI – it means that none of the 14 designated as Fisheries Protected areas in the Fisheries Regulations 1997 are protected areas under the law. Secondly, it undermines confidence in legislation for environmental protection in the BVI as it seems to suggest that the Government's legislative drafting skills are so poor and ineffective that the laws are not worth the paper they are written on. The Government's arguments in the High Court that the law was ineffective also suggests the Government will not uphold a protected area designation if it suits its purposes not to do so. Thirdly, it re-iterates once again that environmental justice and access to justice, while worthy of pursuit, are very difficult to attain. The finding that the Hans Creek Protected Area would suffer a negative environmental impact from the development was never challenged at the Court of Appeal. It is accepted that the project in the approved design cannot possibly be built without this negative impact, which is purportedly against the law. What was challenged was the validity of the protected area status, and the identity of the person named as the defendant. There was no challenge to the environmental facts.

The VIEC is awaiting the written copy of the judgment. Once this is received, our legal team, which could not be in attendance due to the short notice of the judgment delivery, will consider the grounds for further appeal. Until we have time to reflect on the decision, VIEC does not accept the Court of Appeal's finding that Hans Creek and the other designated areas are not protected by law. Even so, as a matter of urgency, the VIEC will be calling on the Government to correct this potential weakness in the Virgin Islands' protected areas system. As VIEC Director, Dr. Quincy Lettsome notes that this weakness is a dangerous threat to the beauty of the Virgin Islands and what is referred to as Nature's Little Secrets.

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