



DEVELOPING A LEGAL FRAMEWORK FOR  
NEGOTIATING DEVELOPMENT CONTRIBUTIONS  
THROUGH PLANNING AGREEMENT FOR  
PROMOTING SUSTAINABLE DEVELOPMENT IN  
WEST MALAYSIA

BY

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## ABSTRACT

Malaysia is experiencing rapid economic development in both urban and rural areas and experiencing an unprecedented scale of growth especially land development and exploitation of natural resources. This increased number of development activities especially those involving infrastructure development has given rise to environmental degradation, sacrificing recreational areas, weakened hill slopes, depletion of natural resources, flash flood, landslide and climate change to list down some adverse problems. Despite the fact that development activities can cause adverse impact to the environment, these activities cannot be prevented completely. Principles of sustainable development were considered and embedded at all levels of decision-making process of the land use planning and development control system by the local planning authority. The local planning authority who is responsible for regulating and monitoring development is required to take into consideration the sustainable development criterions in the decision-making process to ensure the needs of the society is balanced. The local planning authority is empowered to impose conditions and restrictions on any application for planning permission to ensure the proposed development will be carried out in accordance with the specific regulations, guidelines and standards. However, the discretionary power to impose conditions and limitations are not absolute and they were caught by the decision in the case of *Associated Provincial Pictures Houses Limited v Wednesbury Corporation [1948] 1 KB 223*, where the court set out the limits of the powers of the local planning authority in imposing conditions. The court held that “conditions must be reasonable and related to the planning activities”. This decision has become a precedent for those seeking to challenge the decision conditions imposed on a grant of planning permission on the ground of unreasonableness. The local planning authority often imposes conditions requiring the developer to make contributions especially in providing public amenities including environmental protection measures. However, the local planning authority is often faced with challenges from applicants who refuse to fulfil the conditions imposed and agreed between them. This incident has prompted the local planning authority to resort to using private agreements to bind the project proponents to comply with the terms agreed and sealed in a documented agreement. This practice of negotiating development for making contributions between the local planning authority and the developers is informal in nature and not regulated by any particular law except the law of contract for redressing the breach of the agreement. This research using a combination of techniques including analysis of court cases and sample of agreements and interviews traced and confirmed the existence of the informal practice of negotiating development contributions and the use of planning agreement to seal the contract. The method used also differs from one local planning authority to the other especially in respect of the terminologies used, the manner of negotiation, implementation and enforcement of the provisions agreed between the parties to the planning agreement. A cursory review of the practice in England in the United Kingdom, New South Wales in Australia and New Zealand will be made to identify best practices for Malaysia. Thus, the objective of this research is to propose a legal framework to regulate the practice of negotiating development to gain developers contributions towards promoting sustainable development in West Malaysia.

## خلاصة البحث

تشهد ماليزيا تنمية اقتصادية سريعة في كل من المناطق الحضرية والريفية، والتي تعاني من نطاق غير مسبوق للنمو، خاصة تطوير الأراضي واستغلال الموارد الطبيعية. وقد أدى هذا العدد المتزايد من أنشطة التنمية، وخاصة تلك التي تنطوي على تطوير البنية التحتية، إلى تدهور البيئة، والتضحية بالمناطق الترفيهية، وتغيير التلال والمنحدرات، واستنزاف الموارد الطبيعية والفيضان، والانهيارات الأرضية، وتغيير المناخ مما أدى إلى بعض المشكلات السلبية. وعلى الرغم من أن أنشطة التنمية يمكن أن يسبب آثار سلبية على البيئة، فإنها لا يمكن منع هذه الأنشطة تماما. ويتم دمج مبادئ التنمية المستدامة على جميع مستويات العملية، على حسب صنع القرار في تخطيط استخدام الأراضي ونظام التحكم في التنمية من خلال هيئة التخطيط المحلية. وهيئة التخطيط المحلية هي المسؤولة عن تنظيم وتطوير الرقابة، ويطلب منها أن تأخذ في الاعتبار معيار التنمية المستدامة في عملية صنع القرار، لضمان احتياجات المجتمع متوازنة. وسلطة التخطيط المحلية مخولة لفرض الشروط على طلب الحصول على تصريح تخطيط لضمان التنمية المقترحة، وسيتم تنفيذها وفقا للوائح ومبادئ توجيهية ومعايير محددة. ومع ذلك، فإن القدرة على فرض الشروط ليست تقديرية مطلقة، وتم الضبط عليهم من قبل القرار الذي أخذه القاضي في حالة " *Associated Provincial Picture Houses Limited v Wednesbury Corporation [1948] 1 KB 223* "، حيث حددت المحكمة صلاحيات هيئة التخطيط المحلية في فرض الشروط، وقررت أنه "يجب أن يكون بشروط معقولة، وذات صلة بأنشطة التخطيط". وقد أصبح هذا القرار سابقة لأولئك الذين يسعون للطعن في قرار الشروط المفروضة على منح إذن التخطيط، على أسس غير معقولة. وهيئة التخطيط المحلية غالبا ما تفرض الشروط التي تتطلب من المطور لتقديم مساهمات خاصة في توفير المرافق العامة بما في ذلك تدابير حماية البيئة. ومع ذلك، غالبا ما واجهت هيئة التخطيط المحلية تحديات من المتقدمين، الذين يرفضون الوفاء بالشروط المفروضة، ومتفق عليه بينهما. وهذا ما دفع هيئة التخطيط المحلية إلى اللجوء إلى استخدام اتفاقات خاصة في ربط أصحاب المشروعات على الامتثال للشروط المتفق عليها، وهذه الممارسة من تفاوض التطوير لتقديم مساهمات بين هيئة التخطيط المحلية والمطورين غير رسمية وغير منظمة، من قبل أي قانون معين إلا في قانون العقد على خرق بنود الاتفاق. وهذا البحث باستخدام عدد قليل من الدراسات التي تتبع وحالة، أكدت وجود ممارسات غير رسمية للتفاوض المساهمة في تطوير واستخدام اتفاق التخطيط لختم العقد. وتختلف الممارسة أيضا من سلطة التخطيط المحلية واحدة إلى أخرى وخصوصا عند المصطلحات المستخدمة، وطريقة التفاوض، وتنفيذ وإنفاذ الأحكام المتفق عليها بين الطرفين لاتفاق التخطيط. وسيتم إجراء استعراض سريع لهذه الممارسة في انكلترا في المملكة المتحدة،

ونيو ساوث ويلز في أستراليا، ونيوزيلندا، لتحديد أفضل الممارسات لماليزيا. وبالتالي، فإن هذا البحث من أهدافه هو اقتراح الإطار القانوني لتنظيم ممارسة التفاوض، وتنميته، للحصول على مساهمات المطورين خصوصا في تعزيز التنمية المستدامة في غرب ماليزيا.

## **APPROVAL PAGE**

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## DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Siti Sarah Binti Sulaiman

Signature .....

Date .....

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Housing Development (Control and Licensing) Regulations 2015  
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National Land Code 1965 (Act 56)  
Sanitary Board Enactment 1929  
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**NEW ZEALAND**

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Resource Management Act 1991

Soil Conservation and Rivers Control Act 1941



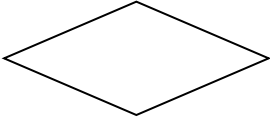

Te Ture Whenua Maori Act 1993

Town and Country Planning Act 1977

## LIST OF ABBREVIATIONS

AER	All England Report
AMR	All Malaysia Report
CLJ	Current Law Journal
CSR	Corporate Social Responsibility
DPR	Development Proposal Report
DOE	Department of Environment
EA	Environmental Assessment
EIA	Environmental Impact Assessment
EPU	Economic Planning Unit
GBI	Green Building Index
IRDA	Iskandar Region Development Authority
JEL	Journal of Environmental Law
JMCL	Journal of Malaysian and Comparative Law
JPL	Journal of Planning Law
JPEL	Journal of Planning and Environment Law
LNS	Legal Network Series
LPA	Local Planning Authority
LR	Law Review
MLJ	Malayan Law Journal
MLJU	Malayan Law Journal Unreported
NDP	National Development Plan
NDPC	National Development Planning Council
NECC	National Economic Consultative Council
NEP	National Economic Plan
NEP	National Economic Policy
NPP	National Physical Plan
NPPC	National Physical Planning Council
PERSADA	Persatuan Pegawai Perancang dan Desa Malaysia
PKNS	Perbadanan Kemajuan Negeri Selangor
RSPB	Royal Society for the Protection of Birds
SABLR	Selangor Appeal Board Law Report
SIA	Social Impact Assessment
SPC	State Planning Committee
TCPD	Town and Country Planning Department
UNCED	United Nations Conference on Environment and Development

## LIST OF FLOW CHART SYMBOLS

Symbol	Symbol Name	Description
	Terminal	The terminal symbol is used to mark the beginning and the end of every flow chart.
	Process	The process symbol is used to show an action involving the process
	Decision	The decision symbol is used to change the flow of the process based upon different types of actions.
 Y N	Flow line	The flow line symbol is used to make the flow of connection.  Yes No

# CHAPTER ONE

## INTRODUCTION

### 1.1 BACKGROUND OF THE RESEARCH

Malaysia has been experiencing rapid economic development predominantly in the urban centres where the demand for commercial and residential properties are always increasing as an evidence of economic growth. Meanwhile, the development in urban peripheral and rural areas, especially land development for developing infrastructure such as highways, exploitation of natural resources sector has given rise to various related adverse environmental impact. Overall, indiscriminate land development has led to degradation and sacrificing of recreational areas, weakened hill slopes, depletion of natural resources, flash flood, landslide and climate change to list down some adverse problems. The Malaysian government has introduced various policies, legal and administrative measures to manage the increasing environmental problems, mainly providing for integration of the principles of sustainable development at all levels of land use planning and development control system. The local planning authority<sup>1</sup>, the agency entrusted with the responsibility to control land development is required to take into consideration the sustainable development criterions. Thus, the local planning authority is empowered to impose conditions on a grant of planning permission to ensure the proposed development will be carried out in accordance with the provisions of the development plans, related policies, law, regulations, guidelines and standards. The corporate property developers are required to make financial contributions towards providing public amenities and infrastructure and lately on matters related to the environmental protection measures. This aspect includes the

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<sup>1</sup> This thesis will use the term local authority and local planning authority interchangeably.

corporate responsibility contributions from developers seeking to promote their businesses. The parties often negotiate the contributions from the developers using private agreements to ensure compliance. At present, the negotiations are carried out informally, lacking in transparency and it is feared it may breed corruption and fail to promote sustainable development as envisaged. Thus, this research seeks to propose a legal framework for regulating the practice of negotiating development to secure developers' contributions towards promoting sustainable development in West Malaysia.

### **1.1.1 DEVELOPMENT CONTROL AND SUSTAINABLE DEVELOPMENT**

The term development and sustainable development is said to have a firm foundation in the land use planning and development control system. This is because the term development under the land use planning system is very broad and often used to refer to the construction of buildings, renovation, demolition or material change of the use of the land and buildings.<sup>2</sup> However, the definition of development goes beyond the normal interpretation as it provides a better life for the people and ensuring basic needs are given for example providing adequate housing, food, facilities, healthcare facilities, employment opportunities and education.<sup>3</sup> Intensive land development and exploitation of natural resources have given rise to various problems especially land degradation, loss of biodiversity, landslides and loss of property and life and various

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<sup>2</sup> Section 2, Town and Country Planning Act 1976.

<sup>3</sup> Richard Pete and Elaine Hartwick, *Theories of Development Contentions, Arguments, Alternatives* (New York: Guilford Publication, 2009), at 1; Stephen M. Wheeler, *Planning for Sustainability Creating Liveable, Equitable and Ecological Communities* (New York: Routledge, 2004), at 19; Mark Stallworthy, *Sustainability, Land Use and Environment a Legal Analysis* (London: Cavendish, 2002), at xxxv.

other adverse impacts.<sup>4</sup> Impacts due to poor land use are regularly highlighted in the media, river pollution, conflicts of land use such as the citing of housing projects adjacent to landfills.<sup>5</sup> As more competing uses for land and its resources arise, conflict often ensues mainly from the landowners owing to restrictions imposed, the regulatory authorities seeking to enforce compliance and the members of the public who suffers from the increasing environmental problems.

Development especially land development is often given a negative connotation in terms of giving rise to environmental impacts. Land use plans incorporate provisions for sustainable urban form, design, biodiversity conservation, and climate change. Development control is a determination of a proposed development's suitability in light of national policy and local plans, made by officers at the local planning authority on a case by case basis. This is where local, regional and national policies on aspects of sustainable development are put into practice. The purpose of land use planning is to achieve sustainable development as this ensures we develop better lives for ourselves without destroying the resources needed by the future generations. Development promotes growth, to meet the housing demands of growing population seeking new designs and choices owing to prosperity, as well as to respond to the changes that new technologies offer and the competition between nations. Sustainable development is about the change for the better, for the built environment and natural environment that is essential to men's well-being, restoring of destroyed habitats, creating open space for the benefit of body and soul. The

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<sup>4</sup> World wildlife fund (WWF), Land Use Planning, accessed from [http://www.wwf.org.my/about\\_wwf/what\\_we\\_do/policy\\_main/policy\\_projects/projects\\_land\\_use\\_planning/](http://www.wwf.org.my/about_wwf/what_we_do/policy_main/policy_projects/projects_land_use_planning/) accessed on 10<sup>th</sup> November 2015.

<sup>5</sup> Timo Kaphengst, "Towards a definition of global sustainable land use? A discussion on theory, concepts and implications for governance: Globalands Discussion Paper". Accessed February 8, 2016. [http://globalands.ecologic.eu/sites/default/files/Globalands\\_Discussion\\_Paper\\_Sustainable\\_Landuse.pdf](http://globalands.ecologic.eu/sites/default/files/Globalands_Discussion_Paper_Sustainable_Landuse.pdf).