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SUSTAINABLE DEVELOPMENT AND PLANNING
PERMISSION
(Integrating State and Local Authority Powers in the
Planning Permission Process to Achieve Sustainable
Development)

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A thesis submitted in fulfilment of the requirement for
the degree of Masters of Comparative Law

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International Islamic University
Malaysia

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*As we venture to make our cities more dynamic and vibrant commercial centers, we must also make every effort to ensure that the development is **sustainable**. The growth of our cities will prove to be volatile and short-lived if we neglect the cities' poorest inhabitants or if we ignore the cities' environmental balance with only the pursuit of pure commercial gains as our focus. Instead of stable and peaceful growth, we will be confronted with rising discontent, crime and environmental disasters.*

*Indeed, planners today shoulder a tremendous amount of responsibility for the well-being of so many people. Although it is repeatedly said that **if you fail to plan, you plan to fail**, I must add that you must not only plan but **plan well**. Often the slightest change of detail in a plan will either ease the burden of life for most citizens, or it will make life much that harder for people. I urge you to always bear in mind your responsibilities to the people and discharge your duties to the best of your ability and with the best of intentions,*

YAB Dato' Seri Abdullah Haji Ahmad Badawi
Prime Minister of Malaysia

Opening Address at the Commonwealth Association of Planners (CAP) Conference,
'Place Making and Sustainable Communities in Urban Development.'
Putrajaya Convention Centre, 5 July 2004.

ABSTRACT

The land development application and approval system in Malaysia today are governed by the existing laws and procedures at the federal, state and local authority levels such as the National Land Code (Act 56 of 1965), the Town and Country Planning Act 1976 (Act 172) and the Street Drainage and Building Act (Act 133) and the Uniform Building By-laws, 1984. The present procedures and practice for processing land development applications for conversion, subdivision/amalgamations, planning permission and building plans in this country however, differs from one state to another thus jeopardizing the main objective of uniformity and sustainability. This situation has led to many ambiguities, conflicts and inconsistencies between the various state administrations of development control in Peninsular Malaysia. Even though the present related laws and regulations have already been adopted by the various state authorities, there still seems to be some teething problems in their implementation and enforcement. The existing procedural system is still too loose and do not give emphasis to the existing laws and legislations that have already been adopted. The aim of this research is therefore to analyse the present practice and procedures used by the various state governments, and local planning authorities in the land development application and approval system and to suggest a common solution that will integrate the powers of the state and the local planning authorities which will guarantee uniformity and proper control and regulation of town and country planning in the local authority areas of Peninsular Malaysia. This will ultimately create the promotion of a proper and efficient physical development process that is able to enhance the natural and built environment of a certain planned area and at the same time, meet the needs of the present and future generations thus achieving sustainable development.

ملخص البحث

ان نظام التصديق الخاص بتنمية و تطوير الأرض في ماليزيا تحكمه قوانين عدة وذلك على المستويات الثلاث: الفيدرالية والولائية والمحلية. نخص بالذكر على سبيل المثال لا الحصر قانون الأراضي القومي لسنة 1966 (قانون رقم 56)، قانون تخطيط المدن والأرياف لسنة 1976 (قانون رقم 172)، قانون الأبنية و تصريف المجاري (قانون رقم 133) و لوائح المباني الموحدة لسنة 1984 . وتجدر الإشارة هنا الى أن الممارسات والاجراءات المتبعة حاليا في معالجة الطلبات المتعلقة بتنمية وتطوير الأرض وخاصة في حالات التحويل وأذونات السماح بالتخطيط والتجزئة وخرط المباني تختلف من ولاية الى أخرى مما يهدد الهدف الأساسي وهو تحقيق اتساق الاجراءات وبقائها. نتج عن هذا الوضع كثير من عدم الوضوح والتضارب بين ادارات الدولة التي تتحكم في التنمية في شبه الجزيرة الماليزية. لقد كانت لهذه الاجراءات القانونية والادارية المتضاربة تأثيراتها الضارة والتي انعكست سلبا على العاملين في مجال البناء مثال لذلك التأخيرات غير المبررة والاثار المالية السلبية و مطالب الملكية لسوق المضاربة التي يصعب السيطرة عليها. ويجدر القول بأن النظام الاجرائي الحالي ما زال يتسم بعدم الانضباط و التفكك حيث انها تولى القوانين والتشريعات الموجودة والسارية حاليا حقها من التأكيد عليها و العمل على تطبيقها بطريقة مثلى. لذلك فالهدف الأساسي من هذا البحث هو تحليل الممارسات والاجراءات المتبعة في التصديق والتطبيق في نظام تنمية الأراضي. ويهدف البحث أيضا لاقتراح حل عام يتم فيه تكامل سلطات الدولة مع سلطات التخطيط المحلي وذلك لضمان الاتساق التنظيمي والاداري في مناطق السلطات المحلية لتخطيط المدن والأرياف في شبه الجزيرة الماليزية. كما يتعرض البحث لتحليل مختصر لايدولوجية قانون التخطيط السائد الآن في ماليزيا والذي يمكن أن يساهم في التغلب على مشكلات تنمية الاراضي . وسيقترح البحث ادخال بعضا من التحسينات في طريقة الاجراءات والخطوات التي يجب أن تتخذها كل سلطات التخطيط في عمليات التنمية لضمان الاتساق والتكامل التامين. ولا شك ان هذا سيؤدي حتما الى خلق عملية تنمية محسوسة وفعالة وقادرة على ترقية البيئة الطبيعية في المجتمع والتي تناسب في نفس الوقت مع احتياجات الأجيال الحاضرة دون الافراط في حقوق الاجيال القادمة وبذلك نستطيع تحقيق ما نصبو إليه وهي التنمية المتوازنة.

APPROVAL PAGE

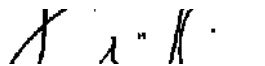
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This dissertation was submitted to the Department of Public Laws and is accepted as a partial fulfilment of the requirements for the degree of Master of Comparative Laws.



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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.

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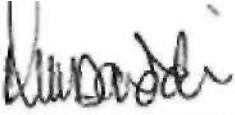
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(Integrating State And Local Authority Powers In The Planning Permission
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In the Name of ALLAH, the Most Merciful and the Most Compassionate.

Praises are for ALLAH s.w.t. and His beloved Prophet Muhammad s.a.w, that with His Blessings, I am able to complete this Thesis without any major shortcomings.

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May ALLAH s.w.t Bless Us All Always.

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CHAPTER ONE

INTRODUCTION

1.0 BACKGROUND

Life is reputed to have started in a garden of trees and throughout history, nature and the natural environment have played an integral role in the development of major civilizations. Evidences of early gardens and life with nature, recorded in Egyptian tombs, Greek and Islamic civilizations, in Cordoba, Madinah, Isfahan and Europe revealed the presence of trees, gardens, herbs and plants planted for food and the human comfort of royalties and the general public at large. They illustrate the genuine emphasis in maintaining a balanced and *sustainable relationship* between Man and Mother Nature. In short, life with nature, that is a balance between man and nature, is a significant part of culture and human survival. In Islam, the relationship between Man and his environment is a manifestation of Man as the *Khalifah* of Allah on this Earth, responsible for protecting its well being, and the environment where he breathes and lives. While Man undertakes development for his spiritual comfort and material wealth, he should never neglect his role in ensuring a balanced development with nature and his surroundings, one in which he and the other creations of Allah can co-exist and also prosper.¹ The close relationship between man and nature has been proven by studies, which shows that the amount of oxygen needed for the survival of

¹ *Total Planning and Development Guidelines*, Second Edition, JPBD Planning Guidelines No.4/2000, Federal Department of Town and Country Planning, Kuala Lumpur 2001.

one human being during his lifetime can be sustained by the existence of a single matured tree.²

Today, a major provision in *The Way Forward*, which outlined the Vision 2020 of Malaysia, is the subject of natural resources and the natural environment. The vision also stressed that in pursuit of economic development...

“We must also ensure that our valuable resources are not wasted. Our land must remain productive and fertile, our water unpolluted, our forest resources capable of regeneration and able to yield the needs of our national development. The beauty of our land should not be desecrated; for its own sake and for our own economic advancement.”³

Malaysia in principle is committed to the concept of *Sustainable Development*⁴. The spirit embodied in this concept was officially endorsed in the Third Malaysia Plan (1976-90) and continues to be the thrust in the Ninth Malaysia Plan (2006-2010). The Langkawi Declaration on Environment and Development, mooted by Malaysia and endorsed by the Commonwealth Heads of Government (CHOGM) on October 21st, 1989 provided an affirmative program of action to help protect and conserve Planet Earth. At the 1992 Earth Summit in Rio, Malaysia had pledged to preserve 50% of the country's green to ensure that the processes of development do not affect the quality of the living environment. Malaysia is also moving on to encourage proper land use control measures and legislation in carrying out physical development towards an integrated approach in environmental planning and management, thus ensuring sustainable development. In this context, the principal and surest means of progressing towards a better quality of life for mankind is by

² Dato' Ismail bin Ngah, *The Greening of a Nation*. Paper presented in the Seminar of Landscape and the Living Environment, at the Sheraton Imperial Hotel, Kuala Lumpur. Organized by the National Landscape Department, 1997 (Unpublished).

³ Dato' Seri Dr. Mahathir Mohamed, *The Way Forward*. Working paper presented at the Inaugural Meeting of the Malaysian Business School Feb 28, 1991. Prime Minister's Department. Kuala Lumpur.

⁴ United Nations Conference on Environment and Development (UNCED), "Rio Declaration on Environment and Development, The Earth Summit" Rio De Janeiro, June 1992. Sustainable development is defined as development which meets the needs of the present without compromising the ability of future generations to meet their own needs.

embracing the concept of *Sustainable Development*. This concept of sustainable development is also in line with section 2A (2) of the Town and Country Planning Act, (A1129) 2001⁵ which outlines the functions of the National Physical Planning Council that is, ... *to promote in the country, within the framework of the national policy, town and country planning as an effective and efficient instrument for the improvement of the physical environment and towards the achievement of **sustainable development** in the country.*

In his speech, the Honorable Prime Minister, YAB Dato' Seri Abdullah Haji Ahmad Badawi said that,⁶ *as we venture to make our cities dynamic and vibrant commercial centers, we must also make every effort to ensure that this development is sustainable. The growth of our cities will prove to be volatile and short-lived if we neglect the cities poorest inhabitants or if we ignore the cities environmental balance, with only the pursuit of pure commercial gains as our focus. Instead of stable and peaceful growth, we will be confronted with rising discontent, crime and environmental disasters.*

Town and Country Planning according to Lewis Keeble, is the art and science of ordering the *use of land*⁷ and the character and siting of buildings and communication routes so as to secure the maximum practicable degree of economy, convenience and beauty. On the same note, physical planning can also be defined as "the allocation of resources, particularly land, in such a manner as to obtain maximum efficiency, while paying heed to the nature of built environment and the welfare of the community" It aims at "securing a sensible and acceptable blend of conservation and

⁵ Town and Country Planning Act, (Amendments) A1129, 2001.

⁶ Opening Address at the Commonwealth Association of Planners (CAP) Conference, 2004 at the Putrajaya Convention Center, 5th July 2004.

⁷ Emphasis is mine.

exploitation of land, as the background or stage of human activity”⁸. Modern physical planning (also sometimes referred to as land use planning)⁹ has its origins in the efforts to improve the urban conditions and quality of life. The squalid, unhealthy and over-crowded living conditions, which characterized the industrial cities of 19th century England, gave rise to a counter-movement, which emphasised sanitation, public hygiene and orderly urban growth. This movement later gave rise to a new concept in town planning founded by Ebenezer Howard called the *Garden City Concept* that is a blend of environmental protection and conservation in the physical development besides improving quality of life and the overall living environment.

In the words of the Prime Minister himself:

‘town planning in Malaysia has become much more holistic and well rounded. It has moved from a mainly physical approach to one that is more people centred, placing equal importance on economic, social and environmental issues. Planning has also become more participatory. From a top-down approach, planning has become more consultative, engaging stakeholders on decisions that affect the way they (people) work, live and play. Our (town planning) legislation has been modified to enable public participation in the preparation of development plans, as well as to allow public appeals.’¹⁰

1.1 SUSTAINABLE DEVELOPMENT AND PHYSICAL PLANNING

The global concern and commitment to environmental management was clearly captured under *Agenda 21* of the United Nation Conference on Environment and Development (UNCED) in 1992. The Rio Declaration on Environment has outlined 27 principles related to the concept of sustainable development some of which can be

⁸ John Ratcliffe, *An Introduction to Town and Country Planning*. Oxford University Press, London 1981.

⁹ Physical Planning or Land use Planning is used interchangeably in this Thesis as Town Planning involves the physical expression in relation to land use in the National Development Plan process. It also ensures a proper and systematic allocation of main human activities by land uses in order to obtain a high quality of life with maximum efficiency and productivity of land.

¹⁰ *Ibid* at 6.

associated to physical planning. For instance, Principle One of the Declaration proclaims that *human beings* are the centre of concerns for sustainable development who are entitled to a healthy and productive life in harmony with nature. Principle Three on the other hand, proclaims that the right to development must be fulfilled to equitably meet development and environmental needs of the present and future generations.

The most well accepted definition of sustainable development of the Earth Summit in Rio is defined as *development, which meets the needs of the present without compromising the ability of future generations to meet their own needs*. The other definition derived is, something which improves the quality of life, the living and working environment, provides shelter for all, creates sustainable energy, transport and construction activities and stimulates the related human resources development and capacity building. Simple as it sounds, the concept is in fact a demanding one in the light of expanding population and diminishing non-renewable resources such as minerals, oil and gas. In many developing countries like Malaysia, there is a tendency to accord greater emphasis on employment generation and income improvement, to the extent that environmental concerns are often ignored or suppressed as a result of socio-economic pressures. There is also increasing awareness that many of the present day pursuit of economic progress are occurring at the expense of the environment and hence are inherently non-sustainable. This has resulted in many cases where the environment has deteriorated to such an adverse level that the remedial repair costs are exorbitantly high (as in the recent case of Taman Bukit Cahaya Seri Alam in Shah Alam in 2005), if at all still possible. Hence, responsible planners and decision makers are those who should balance the economic gains of the physical development against environmental degradation.

1.1.1 The Role of Physical Planning

The role of physical planning in national development which is in line with Vision 2020 and the National 5-year Development Plans can be classified as follows.¹¹

1.1.1.1 Translating National 5 –Year Development Plan Into Land Use Planning

The National 5-year Development Plan can be translated into broad land use strategic policies through the allocation of main human activities such as housing, commercial, industries, recreation and transportation linkages. These broad strategic physical policies or better known as the *National Physical Plan*¹² is formulated for the purpose of determining the general directions and trends of physical development of the country. The *National Physical Plan* must be integrated in a cohesive and comprehensive manner so as to achieve a balance between the physical, social, economic and environmental development.

1.1.1.2 Translating Socio-Economic Objectives into Spatial and Physical Forms

Consistent with the national strategy of achieving a comprehensive and sustainable development, a proper physical land use planning ensures an optimum utilization of resources so as to ensure that all levels of society can share the country's wealth and achieve social equity while at the same time, preserving the natural resources for the future generations.

¹¹ Federal Department of Town and Country Planning, The Role of Physical Planning in National Development. Paper presented by Dato' Wan Mukhtar bin Mohd Noor, INTAN 1999.

¹² Act 172, section 6B

1.1.1.3 Considerations for Environmental Quality in Planning

The processes of physical planning consider environmental conservation and preservation as well as preserving the quality of life of societies and the environment.

1.1.1.4 Planning for sustainable urban centers

Consistent with the requirement for a cohesive and sustainable development, physical planning agencies ensures that urban facilities and utilities are provided for adequately. This includes housing needs, recreation, solid waste management, transportation, economic and employment opportunities and social facilities. Planning for sustainable urban centers will take into account the *National Urbanization Policy*¹³ currently prepared by the Federal Department of Town and Country Planning to ensure that all physical, economical and social objectives mentioned above are met.

1.1.2 Urbanization in Malaysia

Malaysia has been experiencing rapid urbanization in the last two decades. The percentage of the urban population increased from 4.75 million (34.2% of the population) in 1980 to 14.7 million (58.5%) in 2000. By the year 2020 about 70% of the total population in Malaysia will be expected to live in the urban areas. The urban sector has contributed significantly to the economic growth of the country through the ever-increasing demands for businesses and employment and the provisions of basic amenities like housing, health, education, industries and infrastructure. However the increase in population and the rapid urbanization process has also resulted in many adverse conditions that have led to negative impacts on the natural environment of the country. Of late there has been a host of natural hazards affecting the state of the

¹³ Act 172, section 6B(3)

environment such as landslides, water shortages, river pollution, and the loss of prime agricultural land, including forests depletion and uncontrolled hill land development. The latest Environmental Quality Report noted that almost all aspects of the environment have been affected by developmental activities ranging from deforestation, erosion to air and water pollution.

The poor state of the physical environment is especially evident in the urban areas. Poor physical conditions, overcrowding, lack of open spaces and recreational facilities are very common in high density areas and this has ultimately led to other related social ills and problems. The escalating urban problems are further exaggerated in road traffic congestions and lack of pedestrian safety, including for the disabled. It can be assumed that development has occurred without an effective system of checks and balances and there was a lack of proper control and coordination for all physical and land use development. The negative impact on the environment became increasingly visible, with evidences of deterioration observable in many places of the country. In many cases, Man is no longer the subject of ultimate concern.

The increase of population as earlier described however cannot be blamed entirely for the lack of efforts in environmental protection and conservation in land development. This is because in many of the early development projects, little or no consideration was given to the environmental aspects of a development. Many of the laws enacted prior to the 1980s such as the Environmental Quality Act 1974 and the Town and Country Planning Act 1976 (Act 172) were largely sectional in nature focusing only on specific activity areas. Extensive as they were, sector-based legislation did not encourage an integrated and holistic approach to environmental policy implementation but also rendered them less effective and difficult to enforce.