Implementation Issues on Planning Control According to the Provisions of Town and Country Planning Act 1976 in Malaysia

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Implementation Issues on Planning Control According to the Provisions of Town and Country Planning Act 1976 in Malaysia

マレーシアの1976年法に基づく都市計画制度の運用課題

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Planning control, as provided under Town and Country Planning Act 1976 (Act 172), is an essential feature in Malaysian urban planning system. However, planning control implementation in Malaysia has been challenged by the issue of non-compliance with the Act. This paper focuses on two key non-compliance issues; planning not conforming to local plan, and development without or contrary to planning permission and constraint faced by planning authority to handle this situation. Through the study of documents and data, possible causes and its implication towards planning system, planning authority and planning profession are also examined. Finally, some forms of measures are recommended to tackle these non-compliance issues faced by Act 172.

Keywords: Malaysia, Urban planning system, Town planning law, Urban development, Development permission

1. INTRODUCTION

1.1 Background

Planning control is one of the key features in Malaysian planning system. As one of the rapidly developing nations, Malaysian Government put great emphasis in providing effective planning control system to achieve sustainable development goals.

In Malaysia, planning control is provided under Part IV of Town and Country Planning Act 1976, from section 18 to 31A. Town and Country Planning Act 1976 is also commonly known as Act 172. Planning control mechanism in Act 172 is referred to as “planning permission”. Planning permission is defined as ‘permission granted, with or without condition, to carry out development’. It is also provided in Act 172 that no person, other than a local authority, can start or carry out development without planning permission[10]. Nevertheless, there are instances when planning permission implementation were not observed on the ground. This is to say there are developments which happened without complying to planning control requirement of Act 172.

Non-compliance to planning control requirement could create long term negative impacts to many aspects of urban life and planning. Firstly, the objective to create conducive and quality living condition through systematic planning could be jeopardised. Second, planning law could be viewed as ineffective as it fail to be followed. Third, people’s respect for urban planner could diminish as it fail to improve common living condition. Finally, urban governance as a whole could lose its credential as the implementor and manager of development.

With this implications in mind, it is therefore important to examine and understand why non-compliance to planning control provisions occurs. Only with this understanding, planning authorities at the national, state and local levels can improve on existing weaknesses, and ensure a more effective planning control system for the future.

1.2 Past Researches

In recent years, there is a clear increase in the reporting of planning issues in local media in relation to Act 172. These reporting are mostly advocated by interested individuals and Non-Governmental-Organisations (NGO) [11][12][13][14][15][16][17]. Papers specifically discussing planning control issues in relation to Act 172 are rare. This could be due to the fact that planning law is relatively young (since the enforcement in 1976), compared with other more established and widely used legal instruments, like National Land Code 1965 (Act 56), that governs all land matters in Malaysia. The other reason could also be that planning control itself is not a simple subject, as planning authorities here are faced with many emerging issues. To discuss planning control issue with Act 172, which is also a volume subject by its own, could deemed too heavy an endeavour by many researchers.

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However, there was an attempt by Mohd Azam Mohd Abid from the Federal Department of Town and Country Planning Malaysia (FDTP) in 2006 to analyse the effectiveness of Act 172 for planning and control purposes
But discussion on planning control aspect was not done in detail. In Malaysia, data and detail information on planning control compliance are not easily available. Currently, there is no systematic attempt to monitors the implementation issues of Act 172 at national, states or local levels. The Federal Department of Town and Country Planning Malaysia prepared discussion papers from time to time on this subject. However the content of these papers is not open to public, which means they are for department use only.

By looking at the gradual increase in media reporting about planning law and development issues, and active discussions on this subject in a number of public forums, it is expected that more research will be done focusing on Act 172 and its issues in the near future.

1.3 Objectives
In this context, this paper intends to achieve two objectives:
1) To clarify two key non-compliance issues faced by Act 172 on planning control matters.
2) To propose ways of improvement to meet the actual requirement of Act 172.

1.4 Research Methodology
This paper is organised into four parts. Part one explains the overall background of the study, past research, research objectives and methodology in preparing this paper. Part two concentrates on providing a general understanding on the planning system in Malaysia, which include the adoption of planning law - Act 172, planning hierarchy and planning mechanisms. Subsequently, in part three of this paper, four provisions from Part IV of Act 172 were highlighted, and discussed in relation to issues concerning planning control. Issues in group one focus on development contrary to development plans (section 18). While group two highlight issues involving development without or contrary to planning permission and weaknesses in enforcement (Section 19, 20 and 26).

During the course of discussions, each group of issues was analysed in detail. This includes looking into the orginal requirement of individual sections, detailing of the issues, the likely causes and possible implications towards existing planning system, Act 172, planning authority and planning profession. Then, to conclude the analysis, several improvement are suggested to move forward from the existing situation. Examination of issues in this paper is done mainly by assessing the limited amount of information and data available on hand to describe non-compliance issues facing Act 172.

2. URBAN PLANNING SYSTEM IN MALAYSIA
2.1 Planning Structure
Currently in Malaysia, planning laws and systems applied in West Malaysia, known as Peninsula Malaysia and those in East Malaysia are different (Fig. 1).
Table 1 Provisions in Act 172

<table>
<thead>
<tr>
<th>Part</th>
<th>Preliminary</th>
<th>Part II</th>
<th>Policy and Administration</th>
<th>Part IIIA</th>
<th>Regional Planning Committee</th>
<th>Part IIIB</th>
<th>National Physical Plan</th>
<th>Part IV</th>
<th>Planning Control</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part V</td>
<td>Development Charge</td>
<td>Part VA</td>
<td>Tree Preservation Order</td>
<td>Part VI</td>
<td>The Appeal Board</td>
<td>Part VII</td>
<td>Purchase Notice and Acquisition of Land</td>
<td>Part VIII</td>
<td>Development Area</td>
</tr>
<tr>
<td>Part IX</td>
<td>Miscellaneous Provisions</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

Among the amendments to Act 172, changes in year 2001 is considered the most significant to date. The Federal and State Governments' power to monitor development has been strengthened, and regional planning was formally introduced into Malaysian planning system (Table 2).

2.3 Planning Hierarchy

In Malaysia, planning hierarchy is divided into four tiers with the highest hierarchy at federal level and the lowest at local level. There are different planning authorities at four levels of hierarchy. At federal level, Ministry of Housing and Local Government, which houses the Federal Department of Town and Country Planning, is the highest authority that formulates planning policy and sets direction for the country's future physical planning.

While National Physical Planning Council (NPPC), chaired by the Prime Minister, is the highest body that gives advice on all key national planning and development undertakings.

At regional level, Regional Planning Committee is the body that coordinates land use and infrastructure planning for areas covering more than one state. To date, the setting up of Regional Planning Committee is still being studied by the government.

At state level, State Planning Council (SPC) is the chief authority that functions as planning coordinator, promoter and educator in the state. State Planning Council is headed by the executive and political head of the state called Menteri Besar or Chief Minister.

Subsequently, at local level, local planning authority (LPA) is responsible for the implementation of planning and control of development.

Such separation of planning functions and jurisdiction has its advantages and disadvantages. The advantage is that planning responsibility is decentralised and can be implemented quickly on the ground. The disadvantage is that erroneous development could happen rampantly without proper monitoring.

2.4 Planning Mechanisms

To implement effective planning, the support of key and sound mechanisms is necessary. In this case, Act 172 has sufficiently provided for the establishment of three mechanisms that become the fundamental of Malaysian planning system today: development plan system, planning control system and appeal board system.

Table 2 Act 172 and Brief History

<table>
<thead>
<tr>
<th>Year</th>
<th>Events</th>
</tr>
</thead>
<tbody>
<tr>
<td>1957</td>
<td>Malaya gained independence from British on 31 August. Provisions of Part IX of Town Board Enactment (which is also known as CAP 137), continued to govern all planning activities in all states. General Town Plan - a zoning based plan for town areas, prepared under Part of IX of CAP 137, continue to take effect (20).</td>
</tr>
<tr>
<td>1970</td>
<td>Kuala Lumpur, the capital of Malaysia has dropped Part IX of CAP 137 on 20 August, to be replaced by the Emergency (Essential Powers) Ordinance No. 46 of 1970 on the same date. This Ordinance was used to restore order and facilitate development after the racial incident in Kuala Lumpur on 13 May 1969 (20).</td>
</tr>
<tr>
<td>1971</td>
<td>One of the remedial responses from the May 13 incident was the introduction of New Economy Policy (NEP). NEP aimed to eradicate poverty and restructure social-economy composition of Malaysian society for the next 20 years.</td>
</tr>
<tr>
<td>1973</td>
<td>Due to the weaknesses of General Town Plan such as limited coverage that resulted in piece-meal development and rigidity due to strict zoning, a new planning law was introduced in Kuala Lumpur to replace the Emergency (Essential Powers) Ordinance No. 46 of 1970. This law is called City of Kuala Lumpur (Planning) Act 1973 (Act 107).</td>
</tr>
<tr>
<td>1974</td>
<td>Kuala Lumpur ceased to be a part of Selangor State and went under the Federal Government on 1 February. Since this date, Kuala Lumpur is officially referred to as the Federal Territory of Kuala Lumpur (20). This city expanded from 93 km² to 243 km².</td>
</tr>
<tr>
<td>1982</td>
<td>The coming into force of Act 172 has given Kuala Lumpur the opportunity to look into new planning features like the structure and local plan system (20). Due to the special administration of Kuala Lumpur (unlike all other local authorities in Peninsula Malaysia then, Kuala Lumpur City Hall comes directly under the Ministry of Federal Territory) and the provisions of Act 172 which are suitable only to local authorities established in a state, Act 172 is deemed inappropriate to be adopted in Kuala Lumpur (20). Hence, a new planning law was drafted for Kuala Lumpur based on Act 172 blue print. It is called Federal Territory (Planning) Act 1982 (Act 267) (20).</td>
</tr>
<tr>
<td>1993</td>
<td>New Economy Policy (NEP) which has been strengthened and regional planning was formally introduced into Malaysian planning system (20).</td>
</tr>
<tr>
<td>1995</td>
<td>Second amendment was done in 1995, to address weaknesses in environment planning, as a response to the infamous 1993 'Highland Tower' incident that killed 48 people. New provisions concerning environment and conservation issues were inserted in Part IV and V of the Act.</td>
</tr>
<tr>
<td>2000</td>
<td>Third amendment was to tackle issues related to property surplus created during the economy boom period of mid 1990's.</td>
</tr>
<tr>
<td>2007</td>
<td>Latest amendment inserting a new provision concerning the new Solid Waste and Public Cleansing Management Act 2007 (Act 672). It was also when Act 172 was taken into consideration when granting planning permission.</td>
</tr>
</tbody>
</table>

3. DEVELOPMENT PLAN SYSTEM

Development plan is an integral planning component in Malaysia. Basically there are four types of development plans in relation to the existing planning hierarchy (Fig. 2).

3.1 National Level

At national level, two major plans have been prepared - the National Physical Plan (NPP) and the National Ur-
Urbanisation Policies (NUP). National Physical Plan which was approved on 26 April 2005, is a long term national spatial plan that contains policies and strategies to steer physical development in West Malaysia up to year 2020. National Physical Plan’s main function is to provide spatial dimension to national economic policies, such as the five-year Malaysian Plan and Outline Perspective Plan. It also provides policy framework for regional, state and local development planning[28]. Due to rapid development in Malaysia and the international scene, this plan is currently under revision after less than three years coming into force. One year after National Physical Plan, the government launched another national level plan - the National Urbanisation Policy on 11 September 2006[27]. National Urbanisation Policy is the plan to drive, manage and coordinate urban development in Malaysia. It contains six main trusts that were translated into detailed policies and measures, to ensure Malaysian cities remain competitiveness at domestic and international levels.

3.2 Regional Level

Currently, the government is still looking into methods for the preparation of regional plan for West Malaysia. It is very much possible that future regional plan will be prepared for four specific regions, namely Klang Valley Conurbation, George Town Conurbation, Kuantan Conurbation and Johor Bahru Conurbation[28]. With regional planning, the government wish to see more concerted infrastructure and land use development to facilitate economic growth and improve living quality at regional level.

3.3 State Level

To date, 10 states in Peninsula Malaysia already have their own structure plan (SP) that covers the entire state; except for Perlis, where plan is still under preparation[29]. Structure plan is a written statement, supported by plans, photos and illustrations to explain the development vision, policies and strategies for a state. Policies in structure plan are trickled down from the National Physical Plan, thus ensuing continuity within the national planning policy framework. Structure plan is used to improve the overall physical and socio-economic conditions of a state, by creating more balance urban-rural growth and encourage sustainable development. Policies contain in a structure plan include state physical development strategy, policy for environment preservation, infrastructure and social facilities, land use development and also implementation and monitoring mechanism[30].

It is important to highlight that, during plan making, local people and the public are given opportunity to voice their views and objections about the plan, through the ‘publicity’ process, which is a public participation exercise. Public’s views and objections will be taken into consideration when the plan is being finalised by the State Government.

Previously, there are some issues rise related to the preparation and implementation of structure plan. It was argued that structure plan has not been an effective tool in guiding planning and development. Proposals in structure plan are deemed too general and at times not adequately justify. Hence, planning authority and the public did not refer structure plan enough to benefit fully from it. Such view towards structure plan has eroded the its function to set states’ development direction, as provided in Act 172.

3.4 Local Level

Under Act 172, local plan (LP) is prepare at district level, to guide development at city, town, village and rural area. Local plan details out broader structure plan policies. Like structure plan, local plan is also a written document supported by plans, photos and illustrations to show the proposed developments. Local plan contains specific planning guidelines such as allowable density, building heights and set-backs. Local plan also contains lot based proposals for housing, industry, commercial, education, healthcare, tourism, heritage, infrastructures, public facilities and open space sectors. Like structure plan, preparation of local plan also goes through public participation process.

Under Act 172, development approved by local authority must be inlined with local plan and its planning stand-
ards. However, there are some implementation issues related to this. One of the most significant issues to date is about development not complying with local plan. It is argued that local plan does not contain well thought off and properly justified proposals. This weakness has caused changes to local plan during planning decision process, to keep up with demand for development on the ground.

Beside local plan, now local authorities are also required to prepare special action plan (SAP) for an area. Special area plan provides detail measures to plan, develop and manage pressing issue at a specific site, where local plan’s general proposals and guidelines could not possibly deal with. Special area plan could be prepared for the prevention or mitigation of flood, preservation of historic zone or protection of environmentally sensitive area.

The history of special area plan is relatively young compared to structure plan and local plan. First special area plan was gazetted in 2007 for Bestari Jaya in Selangor[31]. Since then, a number of such plan are also prepared. This include Taiping Special Area Plan in Perak and Hang Tuah Jaya Special Area Plan in Melaka[32]. Due to its relative short history, much of the issue related to special area plan has not been studied.

4. PLANNING CONTROL SYSTEM
4.1 Planning Permission Process

Under Act 172, planning control process is basically the process to obtain permission for development and enforcement related to development without permission. Planning permission, according to Act 172, means ‘permission granted with or without condition, to carry out development’. Under section 19 of the Act, no person is allowed to start any development without prior obtaining approval from the local authority. All forms of development require planning permission, except those involve maintenance works inside a building, laying down public utilities like electricity, excavation of earth for agricultural purpose (i.e. digging well), or erection of temporary structure for cultural or religious activities.

As stipulated in section 21 of Act 172, to obtain planning permission, a person must submit application to the local planning authority accompanied by development proposal report (DPR). Development proposal report is a document that contains mainly proposals in the form of development concept and justification, layout design, results from topographic, vegetation and land use investigations, and also land ownership details. As required by Act 172, the proposed layout plans must show measures for protection and improvement of physical environment, making up of open spaces and description of earthworks that need to be carried out. In the case of development involving special architecture or historical importance, the layout plan must also include information on the use and condition of buildings on and surrounding the site, and also measures for its protection, preservation and enhancement.

When local planning authority evaluates planning permission application, it must ascertain that the proposed development is in conformity to current local plan or those under preparation. The development must also comply with any directive given by the State Planning Council for the said development, for example 10 percent low cost housing for new township development. During the time of application, if the project area is not covered by a local plan, then local planning authority needs to notify the owner of neighbouring lots about the intended development, and their right to make objections. Objection if any, will need to be considered thoroughly by local authority before making final decision on the application (Fig. 3).

4.2 Advice from National Physical Planning Council

After the amendment to Act 172 in 2001, besides local planning authority and State Government, Federal Government also play an important role to influence planning decision. Federal Government via the sitting of National Physical Planning Council (NPPC), is required to give opinions and advices on three types of development, as
stipulated in section 22(2A) of Act 172. These developments are: 1) development of new township with more than 10 thousand population or development on an area larger than 100 hectares or both; 2) development of major national infrastructures and facilities, such as airport, railroad, dam or toxic waste disposal site; 3) development on hilltop or hillside area, which are designated as environmentally sensitive area in a local plan.

Developments other than the above types will not seek council’s advice and will go through normal procedure. This approach creates some form of check and balance in the development process. Adoices from the council are binding even though land is under the control of states. There are private developers and officials that argued this process, an addition in year 2003, could slow planning decision, and subsequently, the whole development process. While others have the view that any form of monitoring from a higher authority can minimise manipulation at lower level and better protect public interest.

5. APPEAL BOARD SYSTEM
5.1 Appeal Board’s Function

Besides the opportunity to get involved in plan making, the public are also given opportunity to be heard in planning decision making process. This is done via appeal board created under the provision of Act 172. Appeal Board is established at state level to give a person the opportunity to be heard and change the decision of local planning authority. In reverse, local planning authority is also given the chance to defend its planning decisions. The types of cases that can be heard by an appeal board include those pertaining to planning permission refusal, planning permission conditions, compensation amount made under Act 172 and tree preservation order. During the sitting, both appellant and local planning authority will be called to give testimonies in front of a panel of former judges. Decision made by appeal board is considered final, and can only be challenged in civil court by the appellant or local planning authority, on legal matters, and not on planning matters.

5.2 Acceptance Towards Appeal Board

Thus far, all states in Malaysia except Perlis, have already set up their own appeal board. Among them, appeal boards in Penang, Perak and Selangor are the most active. Total cases received in these three states by August 31 2006 is 294 cases, representing 96 percent of the total cases in West Malaysia (Table 3).

The reasons for such figure could be due to the fact that these states, which are more urbanised and economically and socially more advanced, have relatively more planning permission applications. People of these states are also more informed and confident to challenge unsound planning decisions. So far, appeal board has been successful in providing platform for public to check local authority’s planning decisions and ensure element of transparency in planning decision process.

6. PLANNING CONTROL SYSTEM AND IMPLEMENTATION ISSUES

In this section, the discussion will focus on two groups of implementation issues on planning control in Malaysia. These issues are: 1) development not complying with development plans (section 18 of Act 172); and 2) development without planning permission, contrary to planning permission and enforcement (sections 19, 20 and 26) (Table 4).

Table 3 Cases Received by States’ Appeal Boards

(Until August 31 2006)

<table>
<thead>
<tr>
<th>State</th>
<th>Year Establish</th>
<th>Year of Operation</th>
<th>Number of Cases Received</th>
<th>Total (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Johor</td>
<td>1987</td>
<td></td>
<td></td>
<td>0.0</td>
</tr>
<tr>
<td>Kedah</td>
<td>2001</td>
<td>2001-2006</td>
<td>8</td>
<td>2.7</td>
</tr>
<tr>
<td>Kelantan</td>
<td>2005</td>
<td></td>
<td></td>
<td>0.0</td>
</tr>
<tr>
<td>Melaka</td>
<td>2004</td>
<td></td>
<td></td>
<td>0.0</td>
</tr>
<tr>
<td>N. Sembilan</td>
<td>2005</td>
<td></td>
<td></td>
<td>0.0</td>
</tr>
<tr>
<td>Pahang</td>
<td>2004</td>
<td></td>
<td></td>
<td>0.0</td>
</tr>
<tr>
<td>Perak</td>
<td>1996</td>
<td>1996-2005</td>
<td>44</td>
<td>15.0</td>
</tr>
<tr>
<td>Perlis</td>
<td>-</td>
<td></td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>Pulau Pinang</td>
<td>1989</td>
<td>1991-2006</td>
<td>201</td>
<td>68.3</td>
</tr>
<tr>
<td>Selangor</td>
<td>1999</td>
<td>2001-2006</td>
<td>38</td>
<td>13.0</td>
</tr>
<tr>
<td>Terengganu</td>
<td>1997</td>
<td>1998-2006</td>
<td>3</td>
<td>1.0</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>294</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Table 4 Provisions on Planning Control in Part IV of Act 172

<table>
<thead>
<tr>
<th>Sections</th>
<th>Provisions</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>Use of land and buildings</td>
<td>Issue 1</td>
</tr>
<tr>
<td>19</td>
<td>Prohibition of development without planning permission</td>
<td>Issue 2</td>
</tr>
<tr>
<td>20</td>
<td>Prohibition of development contrary to planning permission</td>
<td>Issue 2</td>
</tr>
<tr>
<td>20A</td>
<td>Duty to consult</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Application for planning permission</td>
<td></td>
</tr>
<tr>
<td>21A</td>
<td>Development proposal report</td>
<td></td>
</tr>
<tr>
<td>21B</td>
<td>Layout plans</td>
<td></td>
</tr>
<tr>
<td>21C</td>
<td>Preparation of plan, etc., by a qualified person</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>Treatment of applications</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Appeal against decision of local planning authority</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Lapse of planning permission</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Revocation and modification of planning permission and approval of building plans</td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>Offences relating to unauthorized development</td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Enforcement in the case of contravention of section 19</td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>Enforcement in the case of contravention of section 20</td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>Enforcement in the case of development that is inconsistent with modified planning permission or approval of building plan</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Requisition notice</td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>Execution by authorized person</td>
<td></td>
</tr>
<tr>
<td>31A</td>
<td>Inconsistency between building by-laws and development plan</td>
<td></td>
</tr>
</tbody>
</table>

These provisions were selected as they set down the control spirit in Malaysian planning system. Failure to put into practice these legal requirements can generate long term negative impacts to the general public, the overall planning system and planning profession. For analysis and discussion purposes, the content of individual section are explained, and follow by issues observed in relation to its implementation. The possible causes and reasons of these issues are examined and their implications described. Finally, proposals are made to suggest improvement for these situations.

— 52 —
7. ISSUES OF DEVELOPMENT NOT COMPLYING WITH DEVELOPMENT PLANS

7.1 Legal Provision

Section 18 of Act 172 stated that no person shall use or permit to be used any land or building otherwise than in conformity with the local plan. In simple term, this means development must follow local plan.

7.2 Implementation Issues

Despite legal obligation, in reality, developments on ground do not always conform to local plans. Under the law, any person can submit application for development. In the case when the proposed development is not the same as in local plan, that application should be rejected by local planning authority. However, there are instances where local planning authorities allowed development contrary to local plans. This has caused certain developments which have adopted the planning team that helped prepare local plans, have no trends for future demand. The possible explanation for this argument is that certain local planning authorities and the planning team that helped prepared local plans, have no clear visions of what they want to achieve for their cities. Because of this, much of the development concepts and guidelines adopted, are merely conventional and standard one, and sometime look similar in other local plans.

7.3 Possible Causes

The causes of non-conformity to local plan can be due to a few inter-related factors. It was argued by some planners and urban administrators that planning guidelines and proposals in the local plans are not futuristic and well justified, as they did not anticipate thoroughly the emerging trends for future demand. The possible explanation for this argument is that certain local planning authorities and the planning team that helped prepared local plans, have no clear visions of what they want to achieve for their cities. Because of this, much of the development concepts and guidelines adopted, are merely conventional and standard one, and sometime look similar in other local plans. This has caused certain developments which have adopted non-conventional design, or design with special features, to have difficulties adjusting to the requirements of local plans, especially on land usage and design standards. Example of these requirements are often related to density or plot ratio of a development. The second possible reason for developments not conforming with local plans is related to local plans' content that seemed not current. This issue could be due to the delay in completing local plans. Before year 2008, standard preparation time for local plan is between 20 to 24 months. After year 2008, preparation time is reduced to 12 to 15 months. The reason for this change is because there are instances when local plans take up more than 24 months to be completed. When this happen, many data and information that are used to justify proposals in the local plans become irrelevant, as changes already rapidly happened on ground. The cause of delay in completing the plans is often related to the postponement of vital meetings meant to approve the local plans. There are officials who argued such postponement is sometime inevitable as officials like the Mentri Besar or Chief Minister (the political and executive head of a state, who also chairs State Planning Council meetings) often have important impromptu matters to attend to. But sometime when postponement happened too often and causes delay for months, this could be viewed as lack of commitment from the government, which is crucial for any success in planning.

Besides that, delay in completing a local plan, to certain extend, is deemed related to the incapability of consultant team, engaged by the government, to complete the plan in time. These consultants are supposedly specialist in their own field like land use, housing, infrastructures, utilities, economy, social, environment, transportation, heritage, tourism, geographical information system and management. Certain consultants are highly skilled, while others, lack expertise and cutting edge technical-know-how. Because of this, certain sectoral consultants find it hard to produce quality work on time, compare to other sectoral counterparts. There are also cases when one consultant handle a few projects at one time and cannot fully concentrate on the jobs. This can indeed effect the quality of local plans. The low job quality of certain appointed consultants has caused government to take more time to check and validate data and proposals in the local plan. Such extra time has contributed to the overall delay in preparation period. Sometime when time is running out, proper checking cannot be done thoroughly, and in the end, the quality of local plan is undermined.

7.4 Implication

When a local plan is frequently changed to incorporate new development, this means, the actual purpose of having local plan to guide future development - allow what is suitable and disallow what is not - can be jeopardised. Local plan in such context, can be viewed as not being able to perform its original function as an effective planning guide for the local planning authority and development guide for the public. Not to mention also the large sum of money (average cost for one local plan is Ringgit Malaysia (RM) 1.3 million or about Japanese Yen (JPY) 2 million), effort and time used for its preparation.

7.5 Ways of Improvement

To improve the content of local plan, local authority must with the help of consultant and project team, explores the potentials and weaknesses of the city and decide on its vision and improvement. This vision and improvement must then be translated into the plan, in the form of clear and well justified guidelines for effective implementation. Planning direction must also meet local needs and aspirations. Proposals not meeting local expectations may not be implemented as they deemed ‘foreign’. Study of local plans must also involves local people and local authority.
as much as possible to produce a plan that represents every party's aspiration. Dialogues with all stakeholders should be carried out continuously through out the process via informal focal group discussion (FGD). Feedbacks to the plan should not be confined to formal publicity sessions only. Tedious it may seem, continuous informal meeting can sometime provide new informations and ideas for better planning and innovation.

To avoid delay in the completion of local plans, the number of decision making meetings should be streamlined to focus on a few pivotal one. Other than key meetings, specially formed sub-committees could also be given power to make certain key decisions for the plans. This will cut down on waiting time and minimise delay. Study team should also familiarise themselves quickly with the study area and local people to proceed smoothly. If possible, planners who are from the study area are given priority to involve or lead the study as they understand the place better and can adapt quickly.

To avoid low quality local plans, the appointed consultants must self-improve and innovate to deliver good work. They should also restrain from taking in too many projects if their professional capacity does not allow. Consultants should give more concentration and better commitment to the projects they are involved with, and not to put their professional reputation at risk (Fig. 4).

8. ISSUES OF DEVELOPMENT WITHOUT OR CONTRARY TO PLANNING PERMISSION AND ITS ENFORCEMENT

8.1 Legal Provisions

Section 19 of Act 172 stated that no person can commence, undertake, or carry out any development unless planning permission for that development has been obtained. Section 20 of the Act stated that no person shall commence, undertake, or carry out any development unless he conforms to the planning permission or the conditions of the permission granted to him. While section 26 of Act 172 stated that any person who development in contradiction to local plans, carries out or permits to be carried out any development in contravention of section 19 or 20, is committing an offence. This offence, if convicted, carries a fine not exceeding RM 500,000 (JPY 16,300,000) or imprisonment not exceeding two years or both. In the case of continuing offence, a further fine of RM5,000 (JPY 163,000) each day is impose upon the offender. The above provisions showed that to develop without planning permission or against planning permission conditions are serious offences, that can lead to heavy penalties to the wrongdoer.

8.2 Implementation Issues

Even though Act 172 has clearly stated the requirements for planning permission and the need to follow planning conditions imposed on any development, there are instances when the law is breeched. This means there are developments that started without planning permission or not fulfilling the prerequisite of planning conditions. For both situations, there are also instances when enforcement is not being carried out properly. Non-compliance to planning control provisions could create far reaching negative impacts in many aspects of planning, including living environment, planning system, urban governance and planning profession. When further analysed, the issues of not complying to section 19, 20 and 26 of Act 172 could be related to two possible causes: 1) public’s ignorance about the requirement of Act 172 and their reluctance to comply; 2) planning authorities’ ignorance about the detail provisions of Act 172 and their reluctance to comply or implement the Act.

8.3 Possible Causes

1) Public’s Ignorance About Act 172 and Their Reluctance to Comply With the Act

The Malaysian general public might not be informed about the existence and content of Act 172, which requires developments to first obtain planning approval from the local planning authority. People who knows this could be limited to those involve in the development and construction fields. Because of this, general public is unaware of the need to apply for planning permission. Because of this also, public does not aware that development without

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Fig. 4 Implementation Issues on Planning Permission and Development Plan of Section 18 of Act 172
planning permission or contrary to planning permission are offences subject to fine and imprisonment.

On the other hand, there are people who knows about the need to acquire planning approval before development can start. However, they do not comply to this requirement. The possible reason could be that these people are discouraged by the delay in getting planning permission approval. On paper, planning permission application takes about four months to complete\[36\]. But there are instances when longer time were taken. Realising the seriousness of this problem and the negative implications to the construction industry, Malaysian Government had on 13 April 2007, launched the ‘One Stop Centre’ (OSC) initiative to tackle this issue\[37\]. OSC is an entity set up in local authority to coordinate all planning applications it received. OSC is responsible to ensure all planning permission applications are processed by relevant technical departments in the local authority within the set timeframe. OSC’s aim is to reduce waiting time from the previous 124 days (including time to send notice to neighbouring lots where there is no local plan for the development area) to 92 days\[37\].

Besides delay, certain people do not apply to planning permission because they do not want to be tied down by planning permission’s conditions given by local planning authority. Example of such conditions include proposed development must comply to local plan; or for development larger than five acres, 10 percent of the land must be reserved for green and open space\[38\]. To some people especially private developers, such conditions are considered rigid and non-profitable. Hence, they are reluctant to comply. There are also private developers who are not afraid to go against planning conditions because they believe planning and enforcement officers, especially those in smaller local authorities, due to their limited resources and unfamiliarity with Act 172, would not be able to carry out monitoring and enforcement effectively.

2) Planning Authorities’ Ignorance About Act 172 and Their Reluctance to Comply With the Act

The other main cause why sections 19, 20 and 26 of Act 172 are not followed properly by planning and enforcement officers, is due to their ignorance about the provisions. Currently, the Federal Department of Town and Country Planning organises hands-on lectures on the implementation of Act 172 a few times a year. The aim is to equip planners and enforcement officers from the state and local planning authorities, with knowledge about Act 172 and its subsidiary laws, such as Planning Control (General) Rules, which is the detail regulations that govern planning permission application process. However, the effectiveness of such training programmes were not evaluated periodically to know their effectiveness in imparting new knowledge to the participants and raised work performance. If this training programme did not achieve the objective to make enforcement officers more competent, then weak enforcement of Act 172 will continue to happen.

Besides that, local planning authorities are found to be reluctant to act on developments without or contrary to planning permission. This could be due to a few reasons. One of the reasons is the issue of shortage of resources faced by smaller local planning authorities in Malaysia. Shortages, especially in human resource, are a hindrance to effective planning and enforcement. The concern for insufficient planners to effectively oversee planning applications and not enough man power to check on erroneous development, are long mentioned issue. Most of the time, financial constraint is cited as the main cause of such problem. Even though local authorities work hard to tackle this issue, including maximum utilisation of existing workforce, but the issue of weak enforcement will not solve if new staffs are not fill in or other better solution is not put forward.

Planning authorities’ reluctance to take on development without or contrary to planning permission is also partly due to the long procedure involves in enforcement action. As provided in Act 172, to take action against development without or contrary to planning permission is a complicating process. It involves prosecution in court and can take months or even years to complete. This has caused certain local authorities prefer taking actions under other law such as Road, Drainage and Building Act 1984 (Act 133), for offences involve building without approval. This preference is very much due to the fact that punishment under Act 133 for such offence is compound, which can be settled by only paying fine and not prosecution in court\[39\]. Local authorities’ preference for this simpler process is understandable, as they are faced with staffing, legal expertise and logistics limitation. Taking action under a more simple law is also deemed better than not taking action at all.

Nonetheless, preference for other laws should not discredit the usefulness of Act 172. In fact, Act 172 which has one of the heaviest punishment for development related offences, should be utilised fully to make planning control effective and development sustainable. One such case that had catered on the strict provisions of Act 172, is the landmark case of Bukit Cahaya Seri Alam, in Shah Alam, Selangor. In this 2005 case, part of the Bukit Cahaya Seri Alam National Agriculture Park was flooded by illegal construction at an adjacent development that did not apply for planning permission. Subsequently, three developers were fined a total of RM840,000 (JPY 27,000,000)\[40\] for causing damage to the park and the surrounding neighbourhoods. This has since served a lesson to private developers and government officials, to heed the laws, in particular Act 172, more seriously.

8.4 Implication

Allowing development without planning permission or contrary to planning approval and also ineffective enforcement, could have a few crucial implications to the field of planning. First, public could lose faith in the whole planning control system as it deem unreliable and could not raise living quality and standard. Second, local planning authority could lose its credential as the controller and manager of development, because the role to protects
lack of effective enforcement. This should also be informed about the consequences of going against the law. This responsibility to educate the public should be shouldered by planners and relevant officials from the federal, state or local planning authorities. Information could be trickled down via specific Focus Group Discussions (FGD), public forums or any available opportunities to dialogue with the public.

Trainings conducted for planners and enforcement officers on Act 172 should also be assessed periodically to understand their effectiveness. Only with systematic assessment can federal government understands whether these trainings had been successful in imparting knowledge and skills to officers, to enable them to carry out enforcement confidently and effectively.

2) Planning Permission System

Malaysian Government has introduced OSC system in 2007 to improve planning delivery at local authority level. Due to its infancy, the effectiveness of OSC is still not being examined fully. Evaluation on OSC should be carried out to know if this new system works better. The weakness of OSC should be improved and its strength be emphasised. If such system works better, then much of the delay faced by planning permission applicants can be solved.

On the issue that public, especially private developer are reluctant to follow planning requirements such as local plan and conditions like open space requirement, federal, state and local planning authorities must take up the responsibility to explain the necessity for such requirements. These requirements are meant to ensure systematic planning to create better living for all. Development application that does not meet the relevant planning conditions should not be entertained. In the case when change is inevitable for local plan, change must be done at the best interest of public and not individual. To ascertain that local plan is used as an effective planning tool, federal, state and local governments should ensure that local plans are prepared efficiently and thoughtfully, with simple to understand, thorough and well justified proposals. This will reduce the tendencies for local plans to become display items only at local authority offices. And only then can public have more faith in the planning control system.

On a long term basis, local authorities, especially those more established one with better resources and expertise, can for a start, look beyond small punishment for minor offences, like illegal extension of houses or erecting illegal workshops. They should look into taking on illegal developments that have larger and deeper implications to the environment and people. To facilitate more effective enforcement, simple, detail but clear guidelines on enforcement procedures and steps should be formulated by federal and states planning authorities. These guides will help local authorities implement enforcement better.

3) Local Authority Resource Management

The issue of insufficient planners to process planning applications effectively and insufficient man-power to enforce against developments without or contrary to planning permission, should be tackled seriously if planning system wants to be effective. For a start, local government should find means and ways to increase financial resources so that more staffs can be employed to conduct enforcement. Even though the number of newly hired could be small in the beginning, but the impact can be far reaching, as more enforcements could be done now. Existing staff members should also be motivated to raise job efficiency and performance. This could be done either by verbal motivation coming from top management or special incentives given to recognise job excellence. All in all, planners and enforcement personnels must be instilled the value of professionalism. As their action will effect planning performance and reflect quality of urban governance (Fig. 5).

9. CONCLUSION

This paper has discusssed two key non-compliance issues faced by Act 172 in Malaysia. These key issues are first, planning not confroming to local plan and second, development without or contrary to planning permission and constraint faced by planning authority to handle such issues. Much of the causes for first issues are related to the content, preparation method and management of local plan, which is found to be losing its usefulness as an effective planning tool. While causes for the second issues are largely related to the public and local government's ignorance about planning control system and also their reluctance to enforce such system, according to the provisions of Act 172.
To make progress from such unfavouring situations, a number of measures have been suggested. These suggestions mainly centred around the need to better educate the public and planning authority, on the significance of planning control and the role it plays to ensure proper development; the necessity to follow planning requirements such as the local plan; more clear enforcement procedure; improvement on local authority’s finance and human resources situation to raise planning delivery and to improve the content, preparation method and management of local plans.

It is recognised that the above suggestions will not solve all issues related to planning control and development in the country. However, such issues if left uncheck, could hamper the government’s effort to achieve developed nation status by year 2020. With 12 years left, any small and concerted effort to improve planning system that facilitates development, should be given a chance and encouragement.

REFERENCES


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