INTRODUCTION

Housing is a burgeoning industry in Malaysia. Initially, housing accommodation was provided by the Malaysian Federal Government in the early days of its independence. Later, the private sector was invited by the government to participate in providing housing accommodation to meet the public upsurges in demand for housing. To govern the housing industry spearheaded by the private sector, the Malaysian Government introduced laws. One of the laws is the Town and Country Planning Act 1976 (Act 172) (‘TPCA’). Despite there are many housing policies and legal means to ensure housing success, there are still issues plaguing housing industry in Malaysia. For instance, one of the significant problems is the issue of abandoned housing projects. This issue has been existed since the 1970s. Nonetheless, hitherto this issue has not been adequately addressed and resolved. Many purchasers have become victims in abandoned housing projects, suffered irreparable damage, and excessive losses.

The objective of this chapter is to discuss the issues arising from the planning law that govern housing development projects in Malaysia. The purpose of the planning law is to ensure the housing development projects are successful and sustainable for human lives and harmonious with the environment. This writing is pertinent, particularly in the event of

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214 Nuarrual Hilal Md Dahlan, “Abandoned Housing Projects in Peninsular Malaysia: Legal Regulatory Framework” (PhD Diss., International Islamic University Malaysia, 2009), pp. 60-118.
abandonment of housing development projects, which hitherto have not been fully resolved in Malaysia. By identifying the issues, the authors will suggest some proposal to overcome the problems and provide better protection to house purchasers and other stakeholders.

This chapter analyses planning legal issues about two (2) abandoned housing projects in Malaysia. The investigation is done by applying qualitative case study and legal research methodologies over these two abandoned housing projects. These two housing projects are:

1) Taman Harmoni, Lot 82, Mukim of Cheras, District of Hulu Langat, at the State of Selangor, Malaysia (‘Taman Harmoni’); and,
2) Taman Lingkaran Nur, KM 21, Jalan Cheras-Kajang, Selangor at P.T. 6443, H.S(D) 16848, Mukim of Cheras, District of Hulu Langat, also at the State of Selangor, Malaysia (‘Taman Lingkaran Nur’).

RESULTS AND DISCUSSION

Case Study 1 - Taman Harmoni

Pursuant to a resolution passed in the Selangor State Executive Council (EXCO) dated 2 October 1991 on the application of the State Secretary of Selangor Incorporated (SUK (Incorporated)) to alienate a piece of land formerly known as Lot 82, Mukim of Cheras, District of Hulu Langat, Selangor (‘the said land’) and based on the layout plan as approved by the Selangor State Department of Town and Country Planning, the Council had agreed on the proposal of alienating the said land to SUK (Incorporated). Prior to the application for such alienation, the EXCO had once approved an application for the said land to be developed into a Low-Cost-Housing-Special-Programme on 21 September 1988. This housing project was named ‘Taman Harmoni’.

The project—Taman Harmoni was divided into two (2) phases—Phase I consists of single-story-medium-cost-terraced houses, while Phase II involved the development and erection of the low-cost flats. The development for Phase I was fully completed, albeit delayed, by the defaulting developer (K&T Development Sdn. Bhd. (‘K&T’)), whilst Phase II had not been commenced at all, except for the preliminary, piling, and levelling works done by the

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215 Hulu Langat Land and District office file number: P.T.D. U.L 1/2/520-91; Majlis Perbandaran Kajang file number: MPkJ PB/KM 2/41-99, MPkJ 6/P/14/93/PT 1; Permodalan Negeri Selangor Berhad file number: PNSB 2/72; Ministry of Urban Well-being, Housing and Local Government file number: KPKT/BL/19/6037-1; KPKT/08/824/6037-1.
defaulting developer. Thus Phase II was considered an abandoned housing project. This project was a joint venture between K&T, Perbadanan Setiausaha Kerajaan Negeri Selangor (State Secretary of Selangor Incorporated (‘SUK (Incorporated)’), being the land proprietor and Permodalan Negeri Selangor Berhad (‘PNSB’). The primary reason leading to the abandonment of the project was the financial difficulties faced by K&T. These difficulties arose due to the lack of skills, experience, and expertise of the defaulting housing developer company (K&T), and the inappropriate selling prices for the units compared to the costs of construction and unforeseen expenses (earthworks and piling works) faced by K&T.216

Fortunately, the project had been revived by the land proprietor—SUK (Incorporated) through their project manager, PNSB—until full completion and Certificates of Fitness for Occupation (‘CF’) were obtained on 1 July 2005. However, the rehabilitation was a loss-making venture for PNSB and SUK(Incorporated).217

**Analysis and Findings**

The facts show that there was no mention in the planning permission and the comments made by the related technical agencies about the future problem of slime soils beneath the land of the purported project. Neither was there any requirement for the applicant developer to carry out soil investigations for the area in the project. Further, as there was yet any gazetted local plan and structure plan for the District of Hulu Langat, at the commencement of the project (Taman Harmoni), which might have envisaged any soil problem and the suitability of the location for housing development. The planning authority being the Department of Town and Country Planning (‘JPBD’), Ulu Langat Municipal District Council (‘MDUL’) and Kajang Municipal Council (‘MPKj’) only had conducted an *ad hoc* investigation about the suitability of the purported project and the land, including by consulting several technical agencies.

The Cheras Local Plan (the local plan where the project under study is located) emphasises the suitability of the specific areas or zones where housing development projects should be carried out, within its jurisdiction. Further, pursuant to the Selangor Structure Plan, the categorizations of the land use in Selangor for specific developments, including land areas and

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216 Ibid.
217 Id.
zones, purportedly suitable for housing development projects, were made after the affected lands had been subjected to certain suitability analyses and after considering issues and factors such as the saturated areas, committed developments and the need to preserve environmental sensitive areas such as water catchment areas, wildlife forest reserves, low-lying watery grounds, high-lands exceeding 100 meter from the sea level and water areas. These measures and analyses were undertaken in order to optimise the land use according to their suitability and to be consistent with the sustainable development objectives and rules.\textsuperscript{218}

Despite the above measures and analyses conducted over the land use, the suitability and the categorizations of the land use, it is opined, the Cheras Local Plan and the Selangor Structure Plan still lack a requirement which imposes on the applicant developers to carry out necessary and thorough soil investigations against the affected land and its soils. This soil investigation is to ensure that the land area and its grounds are practically suitable for carrying out housing development projects. This is because, even though the local plan and structure plan have been prepared after certain studies, analyses and field works made based on primary and secondary data over the suitability of the lands for certain uses, certain specific soil investigations, it is opined, are still required to ensure that the purported location and its soils are suitable for housing development projects. This suggestion is raised, in view of the fact that the said analyses, studies and field works might have been outdated or might not have been exhaustively made and thus they are incapable of identifying specific soil problems such as slime soils beneath certain areas within the jurisdiction of the local plan for certain necessary actions.

Apart from the proposal to fit the above suggestion into the local plan and the structure plan, the above suggestion, regarding the necessity to undertake certain soil investigations, can also be applied, it is opined, when the local planning authority deals with applications for planning permission, provided the above suggestion has been duly given appropriate and sufficient consideration by the draft development plans or the gazetted development plans.

\textsuperscript{218} Majlis Perbandaran Kajang, Jabatan Perancangan Bandar dan Desa Semenanjung Malaysia & Jabatan Perancangan Bandar dan Desa Negeri Selangor, Rancangan Tempatan Cheras 1997-2010, Peta Cadangan dan Pernyataan Bertulis, 1.0-3, 1.0-4, 1.0-10, 1.0-12, 2.02-2, 2.0-8 and 2.0-16; Jabatan Perancangan Bandar dan Desa Negeri Selangor, Rancangan Struktur Negeri Selangor 2020, Perancangan Mampang Selangor Sejahtera, 2-5, 4-119. See also section 12(8) of the TCPA requiring that, the draft local plan must conform to the structure plan, whether or not the structure plan has come into effect or otherwise.
plans or the State Planning Committee so directs or that the development
proposal report made so proposes (section 21\textsubscript{A} of the TCPA), or there is an
objection by the neighbouring land owner to the project site, respectively
pursuant to section 22(2)(a)(the provisions of the development plan, if any),
or (b)(the provisions that the local planning authority thinks are likely to be
made in any development plan under preparation or to be prepared, or the
proposals relating to those provisions), or (aa)(the direction given by the State
Planning Committee, if any) or (bb)(the development proposal report) or (c)
(objection by the neighbouring land owner against the purported application
for planning permission under section 21(6) of the TCPA) of the TCPA.

The planning permission, too, did not emphasise the capability of the
applicant developer to implement the purported housing project. For example,
there was no reference made to MHLG for views regarding the ability of
the applicant developer. Similarly, no references were made to Department
of Environment (‘JAS’) and the Department of Minerals and Geoscience,
regarding the suitability of the location and the soil structure or the provision
of certain countermeasures that the applicant developer had to comply with
before planning permission could be granted.

The above problems may also be due to the absence of a specific
provision in the TCPA, particularly section 22(2) of the TCPA which
does not require the local planning authority to consider the views from
the relevant technical agencies in dealing with an application for planning
permission. Due to the absence of such a specific provision, even though in
practice there are planning rules (the repealed Planning Control (General)
(Selangor) Rules 1996 and the current Planning Control (General) (Selangor)
Rules 2001(Sel. P.U.9)) and guidelines to refer to the technical agencies for
views, the local planning authority may conduct \textit{ad hoc} investigations and
may not seek any view from the technical agencies or if there is any, only
a limited and insufficient number of technical agencies are consulted. This
is because, the duty to refer to these agencies or parties is not mandatory
but is a mere directory, i.e. it is subject to the discretion of the planning
authority, either to refer or not to refer to them, pursuant to rule 8 of the
repealed Planning Control (General) (Selangor) Rules 1996 and rule 8 of
the current Planning Control (General) (Selangor) Rules 2001(Sel. P.U.9)
and the guidelines.

Even though the developer had submitted the Development Proposal
Report to MPKj, according to section 21\textsubscript{A} of the TCPA, there was no mention
about the problem of slime soils at the location of the project. It should be noted that pursuant to section 21A(1)(d)(i) of the TCPA, the applicant developer shall have to describe, *inter alia*, the physical environment, topography, landscape, geology and the natural features of the said land. In other words, the report submitted to MPKj, was incomplete, as the applicant developer did not carry out any soil investigation on the area to ascertain the ‘geology’ of the purported project land.\(^{219}\)

Despite section 22(2)(a) of the TCPA which requires the local planning authority to comply with the development plans (local and structure plans) if any, in considering applications for planning permission, the development plans need not be followed blindly. This was the result of the judicial findings in *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor* [1999] 3 MLJ 1 (Federal Court) and in *Chong Co Sdn. Bhd v Majlis Perbandaran Pulau Pinang* [2000] 5 MLJ 130 (Appeal Board (Penang)). The decisions of these cases have marginalised the importance of development plans. Thus, even if there may be certain provisions in the development plans which the applicant developer shall have to comply with, for example, provisions for avoiding future abandonment or requirements of certain counter-measures and solutions for facing the abandonment, these provisions are not mandatory, following the decision of the above case-law.

In *Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor*, Edgar Joseph FCJ at p. 51 said as follows:

“Before us, it was argued by Counsel for the Society that the Structure Plan, the Malaysia Plan, and Cabinet Policy all have political objectives and these do not constitute legal requirements and are therefore not enforceable.

\(^{219}\) Aznor Abdul Karim, Interview by author, Gombak, Selangor, 8 November, 2006. Based on certain finding, local planning authorities have been slow to take up this provision (section 21A(1)(d) of the TCPA) in their enforcement of development control nor have they used it as a basis of argument in the courts of law. See Mr. Murgan, *Pelaksanaan Penguatkuasaan Akta Perancangan Bandar dan Desa 1976—Prosedur dan Aspek Perundangan*, paper presented at Kursus Teknikal Untuk Pegawai-Pegawai Yang Terlibat Dalam Kelulusan Pembangunan, organized by the Ministry of Housing and Local Government at IKRAM, 2005, quoted from Kamalruddin Shamsudin, *Sustainable Land Use Development In the Klang Valley: An Elusive Dream*, in *Land Use Planning and Environmental Sustainability in Malaysia: Policies and Trends*, 301. See also *Manual Laporan Cadangan Pemajuan, Disediakan di Bawah Peruntukan Seksyen 21A Akta Perancangan Bandar dan Desa 1976*, (Kuala Lumpur: Jabatan Perancangan Bandar dan Desa dan Pertubuhan Perancang Malaysia, April 2001), 18, 19, 33 & 63.
By way of illustration, it was said that planning requirements would relate to density, type of building, landscaping, aesthetic matters, and other matters such as green belt and environmental impact.

The question for decision regarding this part of the case, therefore, is: in considering an application for planning permission for development, what is the status and relevance of the Development Plan? It is not difficult to cite an anthology of authorities on this question. Our choice is as follows.

By s 22(2) of the Act, it is provided that in dealing with an application for planning permission, the local planning authority ‘shall take into consideration such matters as are in its opinion expedient or necessary for proper planning and in particular, inter alia, the provisions of the Development Plan’. These statutory provisions are equivalent to s 70(2) of the UK Town and Country Planning Act. In this context, the cases of Kissell v Secretary of State for the Environment (1993) TLR, 22 July at p 32, Etherridge v Secretary of State for the Environment (1991) EGCS 28 Good v Epping Forest DC [1994] 2 All ER 156 and R v Westminster City Council, ex p Monahan [1989] 3 WLR 408 (the Royal Opera House Covent Garden case) are relevant and show that the Structure Plan has legal status and cannot be disregarded, as Counsel for the Society implied by his submission. It is also obvious that the statutory requirement in s 22(2) of the Act, ‘to take into consideration’ to the provisions of the Development Plan does not mean that the local planning authority must slavishly comply with it. It will suffice if it considers the Development Plan without incurring the obligation to follow it. (See, Lord Guest in Simpson v Edinburgh Corp [1960] SC 313 Enfield London Borough Council v Secretary of State for the Environment (1974) 233 EG 53). But, note the two situations -- not material to the present case -- where the planning authority would be debarred from granting planning permission ( s 22(4) of the Act).” (Emphasis added).

In Chong Co Sdn. Bhd, the appellant (Chong Co Sdn. Bhd), in July 1996, applied for planning permission to erect a 12-storey building. The appellant fulfilled all the conditions and requirements imposed by the respondent. In January 1997, the appellant was informed to consider the reduction of the height of the proposed building to five-storey. The appellant informed the respondent (Majlis Perbandaran Pulau Pinang) of their intention to proceed with the erection of the proposed 12-storey. The respondent did not give any reply as to the status of the appellant’s application. The appellant appealed under section 23 TCPA against the decision of the respondent, contending
that the conduct of the respondent in refusing to make a decision and reply to the appellant tantamount to rejecting the appellant’s application for planning permission. The respondent raised a preliminary objection that there was no decision on the application for planning permission, and there was, therefore, no appealable matter within the meaning of s 23(1) TCPA. On the appeal proper which was received in the circumstances as an appeal against the refusal of planning permission, the appellant contended that there must be granted since they had complied with all guidelines prevailing at the time of submission of the application. The respondent submitted that a proposed development that met with the development plans will not necessarily be approved. The local planning authority must take current conditions and policies into account. Because of the height of the building, the respondent recommended no approval for the plan submitted.

The court, *inter alia*, decided that TCPA does not say that planning permission will be granted if the development in respect of which permission is applied for would not contravene any provision of the development plan. Planning permission could be refused even if the development in respect of which permission is applied for would not contravene any provision of the development plan. And in the instant case, even if the development in respect of which permission was applied would not contravene any provision of the 1987 structure plan, planning permission could be validly refused on account of the provisions that the respondent thinks are likely to be made in any development under preparation or to be prepared, or the proposals relating to those proposals. The development plan was not the only matter to be taken into consideration.

Concerning the decision of the court, Jeffrey Tan J said as follows (at pp. 141—142):

“An application for planning permission is made to the local planning authority -- s 21(1). Where the development involves the erection of a building, the local planning authority may give written directions to the applicant on any of the following matters, that is to say:

a) the level of the building;
b) the line of frontage with neighbouring buildings;

... 
g) any other matter that the local planning authority considers necessary for the purpose of planning.
The local planning authority, in dealing with an application, shall take into consideration such matters as are in its opinion expedient or necessary for planning and in particular:

a) the provisions of the development plan, if any;

b) the provisions that it thinks are likely to be made in any development plan under preparation or to be prepared, or the proposals relating to those proposals;

c) ....

And after taking into consideration the aforesaid matters, the local planning authority may grant planning permission either absolutely or subject to such conditions as it thinks fit to impose, or refuse to grant such planning permission -- s 22(3). However, the local planning authority cannot grant planning permission if the development in respect of which permission is applied for would contravene any provision of the development plan -- s 22(4).

It is observed that the Act does not say that planning permission will be granted if the development in respect of which permission is applied for would not contravene any provision of the development plan. What the Act does say, however, is that the local planning authority, in dealing with an application, shall take into consideration such matters as are in its opinion expedient or necessary for planning, and in particular the provisions of the development plan, if any, and the provisions that it thinks are likely to be made in any development plan under preparation or to be prepared, or the proposals relating to those proposals. It translates, that the local planning authority, in dealing with an application, must consider not just the development plan, if any, but also provisions that it thinks are likely to be made in any development plan under preparation or to be prepared, or the proposals relating to those proposals. It is also observed that the Act defines a development plan as ‘the local plan’, or, if there is no local plan, ‘the structure plan’. There is no local plan in the present case, and the 1987 structure plan, in the event, is the development plan.

It was submitted, that the appellant having complied with all guidelines prevailing at the time of submission of the application must be granted planning permission, that the respondent must continue to use the interim zoning plans enacted under the Town Board Enactment, and, that Zone six which came about after the submission of the application has not been approved by the state planning committee nor adopted by the respondent. With
respect, that is just another way of saying that the respondent, in dealing with the appellant’s application, shall take into consideration only the provisions of the development plan, if any, and not the provisions that it thinks are likely to be made in any development plan under preparation or to be prepared, or the proposals relating to those proposals, and that the respondent must grant planning permission if the development in respect of which permission is applied would not contravene any provision of the development plan. That, as observed, is not true. Planning permission could be refused, even if the development in respect of which development is applied for would not contravene any provision of the development plan. And in the instant case, even if the development in respect of which permission is applied would not contravene any provision of the 1987 structure plan, planning permission could be validly refused on account of the provisions that the respondent thinks are likely to be made in any development plan under preparation or to be prepared, or the proposals relating to those proposals. The development plan is definitely not the only matter to be taken into consideration.” (emphasis added).

The above case study - Taman Harmoni shows that in approving the application for planning permission, the local planning authority (the State Director of Selangor JPBD, MDUL, and MPKj) did not know about the problem of slime soils. Thus, the only ways for the local planning authority to find out about the conditions of the land and its suitability was by making a direct site visit and by way of a reference to certain technical agencies for example the Department of Irrigation and Drainage (‘JPS’), Tenaga Nasional Berhad – electrical authority (‘TNB’) and the Land/District Office and if possible through the information provided in the Development Proposal Report prepared by the applicant developer. However, these parties had not identified the problem of slime soils either.

Even of late, too, planning factors involving and affecting housing development and its sustainability have not been given satisfactory consideration in the development plans.220 This is due to the lack of mandatory, multi-criteria evaluation and multi-criteria decision making (MCDM) in the planning process which emphasise factors affecting housing development, the absence of comprehensive study/assessment/evaluation over factors influencing housing developments including the soil conditions and structures and other matters relevant in housing development, the prices

220 Foziah bt. Johar, Environmental Sustainability in Selected Local Plans in Malaysia, 266 & 269.
for the houses and the development costs, the absence of a coherent policy and the unreasonable political interferences over the planning permission process for housing development (ad hoc planning).221

The above non-compliance, in the case study, was partly because the State of Selangor had yet, as at the date of the applications for planning permissions by the applicant developer, adopted the TCPA in toto and that the Planning Control (General) (Selangor) Rules 1996 only came into existence in 1996. The State of Selangor through the State Planning Committee Meeting had only on 13 May 1996 approved the application of parts IV to IX of the TCPA and TCPA (amendment) 1995, enforced from 1 May 1996. On the same date also, the State Planning Committee approved the application of Planning Control (General) (Selangor) Rules 1996.

Alternatively, during the approval of the planning permission for the project, there were no emphases, guidelines, nor considerations on factors leading to the abandonment of housing projects. Likewise, there were no counter-measures provided to face the problem. Thus, before the enforcement of TCPA and its Rules, the planning practices were made on ad-hoc bases, including by referring to certain technical agencies.

It is opined that the local planning authority could be liable for negligence in their failure to exercise due care in granting planning permission and failure to use proper and sufficient planning control, which partly had caused the abandonment. This is because there is no provision in the TCPA that confers on the local planning authority immunity against any breach of duty and negligence, as compared to and provided for the State Authority and the local authority, pursuant to section 95(2) of the Street, Drainage and Building Act 1974 (Act 133) (‘SDBA’). However, any action against the local planning authority shall be subject to the provisions in the Public Authorities Protection Act 1948 (Act 198) (revised 1978), for example, pursuant to section 2(a) of this act, the legal action must be commenced within three years from the default of that authority.

As compliance with the development plan is not mandatory, following the case-law—Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan

Tanggungan and Chong Co Sdn. Bhd, the local planning authority may tend to carry out ad hoc planning control based on expediency and necessity, especially in areas not identified or covered by any existing development plan. Further, this gives the local planning authority flexibility in exercising planning control. By this reason too, it is opined that, following the above case-law and the subservient authority of the planning authority to the State Authority, these may undermine initiative and need to adopt and apply the gazetted comprehensive development plans. This would also give the local planning authority more flexibility, based on expediency and necessity, even where a gazetted development plan exists for the area, allowing the exercise of ad-hoc planning control over the housing developments to take place. However, it is opined, this situation may lead to certain unwarranted results. Thus, if this was the case, then the judicial policy and the policy of the local planning authority are in conflict with section 22(4)(a) of the TCPA viz, ‘the local planning authority shall not grant planning permission if the development in respect of which the permission is applied for would contravene any provision of the development plan’.

Case Study 2 – Taman Lingkaran Nur

Taman Lingkaran Nur, Kajang, Selangor above was a result of a privatization project between Saktimuna Sdn. Bhd. (the defaulting developer) (‘Saktimuna’) and the Selangor State Government. The latter was the proprietor of the project land, who later alienated the land to Saktimuna for it to develop into a housing project subject to certain terms and conditions. However, in the course of the development of the project, the project failed and was abandoned as Saktimuna faced serious financial problems due to insufficient sales and revenues generated through sales, and their inability to meet the development and construction costs, which persisted from 1992 to early 2000.\(^{(222)}\)

Later the project was taken over by one Syarikat Lingkaran Nur Sdn. Bhd. (‘SLN’) — the first rehabilitating party with the consent of the Selangor State Government and the defaulting developer. Unfortunately, SLN also suffered the same fate, i.e. it was also unable to complete the project due to financial constraints.\(^{(223)}\)


\(^{(223)}\) Ministry of Urban Well-being, Housing and Local Government file number: KPKT/08/842/4274.
On the instruction of MHLG and numerous appeals from the aggrieved purchasers, Syarikat Perumahan Negara Berhad (SPNB) had taken over part of the project, i.e., Phase 1A from SLN, with the consent of the Selangor State Government and Saktimuna. Being a government-linked company (‘GLC’), SPNB obtained funds from the Ministry of Finance (‘MOF’) to revive the project. The rehabilitation succeeded. However, this rescue was a welfare service, in that the available moneys in the hands of the end-financiers were insufficient to meet the rehabilitation costs. MOF had to top-up funds to ensure the completion of the rehabilitation. During the course of the rehabilitation, there were several problems faced by SPNB, and one of them was the refusal and failure of certain purchasers to give consent to SPNB to carry out the purported rehabilitation works. Thus, not all the units in Phase 1A had been fully rehabilitated and obtained CF. The remaining phases (Phase 1B and 2), except for Phase 3 which SLN had a joint-venture with Tanming Sdn. Bhd. and it was developed into a completed housing project now known as Taman Cheras Idaman, have as yet been revived. These phases (Phases 1B and 2) are still in the course of negotiation and study for rehabilitation, both by Saktimuna, the Official Receiver (‘OR’) (being the Kuala Lumpur Department of Insolvency—Jabatan Insolvensi, Kuala Lumpur) and the new chargee (Idaman Wajib Sdn. Bhd.).224

Analysis and Findings

In general, the legal issues for the above case study concerning planning permission, are quite similar to the first case study—Phase II of Taman Harmoni as elaborated above.

Based on the instant case study’s legal observations, the authors find that in approving the planning permission, there were no local plan and structure plan (development plans) for the area, on which the project was to be implemented, which would have envisaged the problem of soil erosion, which could be referred to by the local planning authorities (State Director of the Selangor State JPBD, Shah Alam Selangor, MDUL and MPKj). Indeed there were references made to certain technical agencies, for example, the JPS, TNB and the Land/District Office but these agencies had not emphasized the possibility of soil erosion problems at the location of the project either. Besides, there was no reference made to MHLG, JAS, or the Department

224 Ibid.
of Minerals and Geoscience to ascertain the capability and suitability of the developer and the project location.

The planning permission granted to the developer had also not addressed measures to avoid any possibility of future abandonment of the purported housing development project and ensuring the success of the development. For example, in respect of the geographical situation and the soil structure, this problem includes soil erosion problems to the adjacent land due to the flowing water of Sungai Long and the construction management and the financial management for carrying out the housing project.225

The above problem occurred, partly because the State of Selangor had yet, as has been explained in the first case study above, at the date of the application for planning permission, adopted TCPA in toto and the Planning Control (General) (Selangor) Rules 1996 only came into existence in 1996.

Alternatively, during the approval of planning permission, there was no emphasis, guideline, or consideration on factors leading to the abandonment. Thus, before the enforcement of TCPA and its rules, the planning practices were done on an ad-hoc basis—by referring to certain limited technical agencies (Ulu Langat District Office file number PTD.UL.1/2/334/82 Semt). The local planning authority too did not give considerations, particularly on the possibility of abandonment and providing its countermeasures.226

Even the current TCPA’s provisions, for example section 22(2) of the TCPA too, does not provide the planning authority with a duty to refer to the relevant technical agencies such as MHLG and the Department of Mineral and Geoscience and JAS, when considering the application for planning permission.

Similarly, there was also no Environmental Impact Assessment Reports (EIA) carried out by the developer, particularly in respect of the soil structures, as the purported activities would not fall under the ‘prescribed activities’.

Likewise from the contentions and elaborations in the first case study, there is still a lack of mandatory, multi-criteria evaluation and multi-criteria decision making (MCDM) in the planning process and absence of comprehensive study/assessment/evaluation over housing development projects on part of the planning authorities, which has partly contributed to the abandonment of the project and its consequences.

Even if the above matters (the mandatory multi-criteria evaluation decision making and multi-criteria decision making (MCDM) in the planning process) exists in the development plans, the decisions in *Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan* and *Chong Co Sdn. Bhd* which tend to undermine the importance of complying with the development plan as provided in section 22(2)(a) of the TCPA in dealing with the applications for planning permission, may mar the effectiveness of the purported planning permission, which the development plans could have provided measures for facing the problems of abandoned housing projects. Further, the ensuing consequences, emanating from this problem as illustrated in the first case study above, may also occur.

Just as much as has been elaborated in the first case study, insofar as the instant abandoned housing project is concerned, the local planning authority may be liable for negligence or breach of duty for failure to exercise due care in granting planning permission and for failure to exercise proper planning control which had partly caused abandonment of the project. This is being so, it is opined, as there is no immunity provision in any statutory provision, particularly in the TCPA, conferring immunity on the local planning authority, against any breach of duty and negligence on their part, as compared to and provided for the local authority pursuant to section 95(2) of the SDBA. However, as emphasised in the first case study, this legal action shall be subject to the provisions in the Public Authorities Protection Act 1948 (Act 198) (revised 1978), for example, pursuant to section 2(a) of this act, the legal action must be commenced within three years from the default of that authority.

**CONCLUSION AND RECOMMENDATIONS**

The planning authorities in Peninsular Malaysia must apply multi-criteria evaluation and multi-criteria decision making (MCDM) in the planning process involving housing development, recognize factors leading to housing abandonment and provide countermeasures for addressing the same and its consequences. So far there is none, insofar as the District of Hulu Langat and Mukim of Cheras are concerned. The development plan, especially the Local Plan, providing the multi-planning-criteria for housing development such as measures to avoid and to settle problems of abandoned housing projects and its consequences, has to be expeditiously gazetted to prevent any *ad hoc* planning.
Even though there is a dual administration of State Authority and planning authority, which has contributed to the inefficiency and ineffective control of land uses, alienation and subdivision of land and planning control, any problem emanating from this, can at least be minimized, if not eliminated, by way of better integration and coordination between the authorities--the State Authority, planning authority, building authority, housing authority (MHLG) and the other relevant technical agencies.

EIA report should also be submitted by the applicant developer according to the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987 (P.U.(A) 362/87) of the Environmental Quality Act 1974, irrespective of the measurement or size of the housing project. For this purpose, such an amendment has to be made to item 7 of the Schedule Order to the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987 of the Environmental Quality Act 1974 (Act 127).

As far as both of the housing projects are concerned (Phase II Taman Harmoni and Phase 1A Taman Lingkaran Nur), there was yet, at the time of the issuance of the relevant planning permission, any or comprehensive gazetted development plans (local and structure plans) dealing with and applying multi-criteria evaluation and multi-criteria decision making (MCDM) in the planning process involving housing development (especially, the suitability of the project’s location and the counter-measures to face and prevent the problems and occurrences of abandoned housing projects), which the planning authority could refer to. Even the current gazetted Selangor Structure Plan, and the Cheras Local Plan too do not provide factors leading to housing abandonment and do not provide measures and methods to solve the problem and its ensuing consequences and losses.

In absence of the gazetted development plans, insofar as both housing projects are concerned, it was the discretionary practice of the planning authority, to refer to certain relevant technical agencies for comments and approval of any purported application for planning permission to undertake housing development (Rule 8 of the Planning Control (General) (Selangor) Rules 2001). However, this practice has yet been to be put into the mandatory provisions of the TCPA. The absence of such a mandatory statutory provision may lead to the local planning authority not referring to them for approvals or views or setting aside their conditions, views, and approvals/disapproval. The technical agencies include the JPBD, Department of Public Works (‘JKR’), JPS, Sewerage Service Department (‘JPP’), JAS (in term of the suitability
project location for drainage purposes), Department of Health (JK), TNB, Department of Water Supply (JBA), District and Land Office, Highway Board (LLM), Department of Minerals and Geoscience (in respect of soil structures), MHLG (in respect of the capability of the applicant developer insofar as Act 118 is concerned) and other relevant agencies, for the purpose of commenting and reference over the proposed housing development to be carried out by the applicant developer. For this purpose, a new supplemental mandatory provision needs to be inserted into section 22(2) (Treatment of Applications) of the TCPA. The additional provision should also state the obligation and mandatory adherence to the development plans. Thus, the proposed provision should read:

*Addition to Section 22(2) of the TCPA*

‘In dealing with an application for planning permission, the local planning authority shall take into consideration…-

(bc) the necessary views of the technical agencies’ (emphasis added).

The word ‘technical agency’ should also be interpreted and inserted into section 2 of the TCPA as follows:

*Addition to section 2 of the TCPA*

‘Technical agency’ means any relevant authority which shall be consulted for necessary views, insofar as the local planning authority deems necessary, for the purpose of issuing any planning permission by the local planning authority”.

The planning permission and all the conditions stipulated should be made certain and not be subject to variation from the date of the issuance, during the course of construction, development and rehabilitation of the project until the date of the application of CF/Certificate of Completion and Compliance (‘CCC’) by the qualified persons/Principal Submitting Person (‘PSP’). This is to avoid any possible problems to the developer, as evident in both case studies, which had led to abandonment, unless the planning authority and the technical agencies agree to bear all the ensuing costs as a consequence to any change or variation made by the developers. Therefore, a new provision should be inserted into section 22 of the TCPA to the effect of the following:

*Addition to Section 22(7) of the TCPA*

‘The conditions for the planning permission so granted, shall be irrevocable and shall not be subject to any variation unless the local planning authority or the technical agencies, as the case may be, shall bear all the costs and expenses to be incurred by any applicant
consequent to the carrying out of the required variations except as otherwise provided in this Act’

Similar should be the case for the conditions of the approved building plan and other plans. To effect this suggestion, a new supplemental provision should be inserted into section 70 of the SDBA, viz clause 18A, which reads:

*Addition to section 70 of the SDBA, i.e. section 70(18A)*

‘The plans so approved and the conditions so imposed by the local authority or the technical agencies, shall be irrevocable and final for the purpose of issuance of certificate of completion and compliance, pursuant to this Act or any By-laws made thereunder and if later in the event, there is any variation in the plans or conditions for the purpose of the issuance of the said certificate, required by the local authority or the technical agencies, as the case may be, the local authority or the technical agencies concerned shall make good any losses incurred as the result of such required variation’

Finally, regarding the human resource, inefficient administration, and logistics problems, it is suggested adequate priority, administrative revamps and monetary provisions should be provided by the State and Federal Governments to ensure the efficiency of the local authority and the technical agencies machinery.

**REFERENCES**


Letters, circulars and undocumented materials of Majlis Perbandaran Kajang file number: MPKj 6/P/14/93/PT 1.


Letters, circulars and undocumented materials of MHLG file number: KPKT/08/824/6037-1.

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Street, Drainage and Building Act 1974 (Act 133).


**Cases**


**Statutes**


Planning Control (General) (Selangor) Rules 2001(Sel. P.U.9)).
