



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



SURRENDER AND RE-ALIENATION OF LAND IN JOHOR, MALAYSIA: A PLANNING TOOL AND MECHANISM FOR SUSTAINABLE PROPERTY DEVELOPMENT

**AZMI, ROHANI (1); SUHAILIZAN SULIMAN (2); MOHD HALIM, HASBULLAH (3);
AMIRUL HAFFIZ, ARIFF (2); MOHD SHAHRIZAN, SAHID (3);
ROBIAH, SURATMAN (4); SALFARINA, SAMSUDIN (4)**

1: Johor State Secretary, Malaysia; 2: Johor Land and Mines Department, Malaysia, 3: Johor
State Secretary Incorporation, Malaysia; 4: Universiti Teknologi Malaysia, Malaysia

suhaulizan@johor.gov.my

**Paper prepared for presentation at the
“2019 WORLD BANK CONFERENCE ON LAND AND POVERTY”
The World Bank - Washington DC, March 25-29, 2019**

Copyright 2019 by author(s). All rights reserved. Readers may make verbatim copies of this document for non-commercial purposes by any means, provided that this copyright notice appears on all such copies.



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



Abstract

In Malaysia, land laws are governed by the National Land Code (NLC) 1965. There are rules and restrictions imposed by the NLC 1965 and Town and Country Planning Act 1976 (Act 172) which control and guide the property development. Uniquely, the implementation of the NLC 1965 is different from one state to another, such as the application of conversion, sub-division, partition or amalgamation. As far as development is concerned, there is another enabling provision that control the proposed development. Nevertheless, these two governing laws are related to each other. In Johor, the state authority has implementing surrender and re-alienation mechanisms, as part of property development approval. This paper discusses on process and procedures of surrender and re alienation, the relation between the two acts in property development, practices and some key challenges of the mechanism. The unique process has contributes fruitful significances for sustainable property development industry.

Key Words: *Development Approval , Development Planning, Surrender and Re-Alienation.*

1.0 INTRODUCTION

Sustainable development requires an effective and efficient management of the social, economic, and environmental aspects of land as a limited resource. Consequently, land administration offers a useful mechanism for sustainable development as the land functions to serve the society either in the form of individual ownership or for the purpose of consumption of natural resources. This involves regulating the land investment, assessing the land value, collecting the property tax, and controlling the land use. Next, land management includes the following components: land policies, land information infrastructure, and land administration functions in support of a sustainable development. Meanwhile, land administration functions include land tenure, land value, land use, and land development which are the fundamentals of land policy implementation with support gained from appropriate land information infrastructure (Ahmad, F, Maidin S. L& Zainon, R, 2013). On the other hand, land development island planning process that needs a proper arrangement of infrastructure.

Land planning should come together in the development process to ensure the mode of sustainable development can be achieved. In Malaysia, there are four level of government involvement which is federal, regional, state and local authority in spatial planning with the intention of establishing a more effective development plan system (Ahmad, F, Maidin S. L& Zainon, R, 2013). Town and Country Planning Act 1976 (Act 172) is one of important legal reference in determining on “what”, “why”, “where”, “when” and “how” the development should be conducted. Beside Act 172, Statutory Development Plans also play an essential role in the development control system. These plans are type of blue print against which an application for planning permission is determined. The legal provision, statutory development plan, guideline of planning standard and above all else is aiming to set a systematic development approach. The systematic development approach is important to ensure that the development is met the needs of society in the present and future. Therefore, Johor State Government has taken a sustainable development approach by implementing the Surrender and Re-Alienation method. Surrender and Re Alienation empowers the rights of land proprietors and market players to develop and fully optimise their land in the sustainable mode.

2.0 LAND DEVELOPMENT

Land development refers to how urban land is produced in the form of buildings and sites for various activities (Healey, P , 1991). Practically, it refers to the land conversion for residential, commercial, and industrial purposes, or other activities. In economic context, land development is the process of land

improvement or land amelioration (Smith, R.M C, 1987). Land development also described as investment-making land more usable by humans, depending on the type of land used in certain areas and the characteristics of development such as residential density. Land development is essential for a society's success. While development can sometime be frowned upon, as it changes the face of the landscape, creates more traffic, changes ecosystem and habitats, it is imperative for the prosperity of the society. Through land development, it can generate more jobs, increase the housing supply, unites the society, and provide public amenities. Whether the development is residential or commercial it is bring the economic stability.

Land development can be divided into two categories, (i) carrying out of physical operations such as building or engineering work, and (ii) making of a material change of use (Cadman, P, 2002). There are three prominent level of land development which is:

1. Pre-development stage comprising sub-stages of initiation, site selection, feasibility and planning consents
2. Development stage comprising sub-stages of tendering, construction, project management, leasing, financing and sale (disposal).
3. Post-development stage comprising sub-stages of maintenance, management, leasing, financing and sale (disposal)

In enabling the infrastructure or building to be develops before transforming it into economic form the first important step is development planning. Finding a balance between development, society needs and environmental is the key to the planning development.

2.1 DEVELOPMENT PLANNING

Development plan is a document which provides planners with guidelines to follow during the development assessment process. Development plan is not only written document with econometric models or input-output analysis, it is an activity that involves intricate political process, requires far-reaching changes in social organisation, beliefs, attitudes and revitalising the administrative tools for implementation(Sharma, K. C, 1967). In Malaysia, development planning system are consists of four level of planning which are National Physical Plan, Structural Plan, Local Plan and Special Area Plan. All the plans are in compliance with the Town and Country Planning Act 1976 (Act 172) which derived from the National Development Planning Framework. This framework consist in three levels such as National,

State and Local level. Those plans provide an integrated top down development plan and strategies which mainly focus on physical, environment, economic and social aspects towards national development objective that stipulated in the vision 2020.

Local planning authority is required in preparing and guiding a local plan for land development. Local plan is a written statement that elaborates the policies and proposals in a structured plan, and consists of diagrams showing the plan in details; a manner of executing and implementing the proposals based on the structured plan of local planning authority area (Maidin, A.J & Ali, B. B. M, 2009). It is important as reference or guidelines for planning authorities and any other related agencies in conducting development activities. Beside, local plan interprets policies and representations from the public incorporated in the structured plan and to implement such aspects in line with the social development, economic, and use of resources in a local planning authority area. Formulating proposals in a local plan requires the local planning authority to ensure that the proposals generally conform to the state's structured plan, irrespective as to whether the plan has come into effect, and is required to regard any information and other considerations that appear to be relevant, that in this case is considered by the committee. The local planning authority, upon being directed by the committee, as soon as practicable is required to prepare for that part, a draft local plan of such nature is specified in the stated direction.

Act 172 does not express that planning permission must 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. The development plan is definitely not the only matter to be taken into consideration. It is the responsibility of the planning authority to plan and enforce laws to ensure a well-managed and orderly growth of certain local authority areas. Local authority is also entrusted to realise the government development policies and assist in revitalising the local economy. The planning authority exercises control over land development activities by making it compulsory to obtain planning permission prior to conducting any land development activities.

2.2 DEVELOPMENT CONTROL

Development control is a process by which authorities manage the extent and nature of growth in local area. Malaysia, like other developing countries, faces conflict between economic growth and conservation of environment. However, it recognises the concept of sustainable development and has embedded this concept in its policies, vision, mission, and plan (Saadatian et. al, 2011). One of the major threats for

Malaysia in maintaining future sustainability is changes in the land use. Thus, planning plays an important role in controlling the land use and development pattern. The Town and Country Planning Act (Act 172) 1976 was enacted to introduce uniform law and policies regarding to the development planning in Peninsular Malaysia. In particular, the objectives of this act is to ensure the appropriate control mechanism and regulation of town and planning for authorities in the various States of Peninsular Malaysia. In Malaysia, town and country planning commonly covers these planning system namely, National Physical Plan, State Structure Plan, and the Local Plan and even the special area plan.

Besides Town and Country Planning Act 1976, National Land Code 1965 is part of development control in respect of land matters. Section 14, National Land Code 1965 provides the State Government to draw up individual State Land Rules that outline various procedures pertaining to land in a particular state. As land administration is a state's matter, procedures related to dealings of land, which include conversion, subdivision, partition or amalgamation, vary between states. From the land administration perspective, land development in Malaysia simply means a process of which requires the changes of original use of any alienated land that affects in its restriction in interest, express condition, and land use category as opposed to what has been earlier alienated by the State Authority. There are rules and restrictions imposed by National Land Code 1965 which guide and control the development. Currently, there are nine options of land development as stated in the NLC 1965:

Section 124	Application for variation of conditions, restrictions, and categories of land
Section 124A	Simultaneous applications for subdivision and variation of conditions, restrictions and categories in respect of the proposed sub divisional portions of land
Section 137	Application for subdivision of land
Section 142	Application for partition of land
Section 148	Application for amalgamation of land
Section 197	Application for surrender of whole land
Section 200	Application for surrender of part only of the land
Section 203	Application for surrender and re-alienation of contiguous lots held under Land Office Title
Section 204D	Application for surrender and re-alienation of land by special provisions

Most development control is based on zoning. In this respect, landowners or developers who wish to develop their land shall apply for Development Permission, and the proposals for development shall comply with the requirements. If there is in need for conversion of land, approval shall be obtained from

the State Authority. Furthermore, surrender and re-alienation (SBKS) indirectly has become tools for development control in State of Johor because of the unique approach which integrate both planning law and land law into one process.

3.0 SURRENDER AND RE-ALIENATION MECHANISM IN JOHOR

Surrender and Re-Alienation of Land (SBKS) is defined as “land restoration, either as a whole or a temporary title by proprietors to the State Authority for a particular purpose for which the land will then, be reinstated by the State Authority to the proprietors (Awang, A, 1997). In other word, it refers to the act of “land proprietors surrendering their lot of land or part of land (boundaries) to the government and in the meantime applying for the alienation of the same lot in the plots form without losing the right to the land”. Surrender and re-alienation is included in the National Land Code 1965 through National Land Code (Amendment) Act 1984 (Act A587) that intends to provide alternative way by which a land can be subdivided and the subdivided portions be used for various purposes without the proprietor having to face the risk of losing land. Moreover, section 197 NLC (1965) also states that the proprietor of any alienated land held under Registry title, Land Office Title, or Qualified Title with the approval of State Director or Land Administrator, may surrender to the State Authority the whole or part of land. Under this special provision, the tenure of the title is remains the same. In other words, if a land is held in perpetuity then the perpetuity title will be granted back to the proprietor.

There are two types of land that can be surrendered and re-alienated:(i) any land held under qualified title and final title; and (ii)two or more lands held under qualified title and final title or a combination which are contiguous and held by the same proprietor or co-proprietors. The implementation of surrender and re-alienation in Johor refers solely to section 197 cross refer to section 76 while other states in Malaysia proceed directly to section 204 D. It is where land owners willingly surrendering his land with the intentions to develop the particular land and not just a mere surrendering. For example, landowners wish to develop agricultural land to a high-end housing projects. Thus, the landowners’ initiative is to surrender their land to the State Authority for the conversion of the new land use categories. The urge for SBKS implementation from landowners’ perspective is in the forms of value and market demand. Other than the fact that SBKS implementation benefits the landowners, it also secures the right of the State Authority particularly in imposing new rate for premium and quit rent based on the proposed development. Meanwhile, from the perspective of development plan, SBKS is perceived as a useful tool to meet the ongoing needs and demand. SBKS system also allows demarcation of all reserved areas, such as mosque, green area, and utilities. In other word, demarcation of the reserved area is a land preservation

method for the State Government. In this sense, surrender and re-alienation is considered as an important tool in translating government policies that promoting sustainable development into an action. This is because land matters are governed by the National Land Code (NLC) which adopts the “Torrens System”, therefore, land use is actually subject to restriction and conditions imposed by the State Authority which act as a land of limitation to the proprietors to ensure the sustainability development

3.1 SURRENDER AND RE-ALIENATION PROCESS

Application for Surrender and Re-Alienation (SBKS) in the forms of planning permission need to be submitted to the One Stop Centre (OSC) centralized at the local planning authority. The OSC will then distribute the planning permission to all the technical departments. Basically there are about 10 to 15 technical departments which need to be consulted and to get their technical comments. Upon getting all the comment OSC will then approve the planning application which basically deal with the guidelines or planning standard. The basic understanding about the SBKS process is where a big piece of land is now intend to be subdivided according to the proposed development which may comprise of residential, commercial and even industrial. It may relates to components development that meet with the stipulated zoning, the preservation of green area, road reserve and few others. It means, once the planning permission fully granted by the planning authority, any development shall proceed with subdividing the land under the SBKS process in which it requires for the consultation from the district land office before it is brought to the attention of the state authority. It is important to highlight that even if the planning permission been granted of the local planning level, it does not meant that the development can simply take place without complying with the SBKS. SBKS will then act as tool on how the proposed development based on approved planning permission reflect to the land itself.

It is pertinent to note that the SBKS is a tool of confirming the planning permission in terms of land subdivision meanwhile planning permission merely dealt with the guidelines as far technical requirements are concerned. In other words, the requirement of SBKS is to conform with the proposed land use approved in the planning permission which will then followed by issuance of new titles with new categories of the land use. Legally, any construction on the land shall be in accordance with the use of land use and therefore the needs of SBKS is to conform that the planning permission granted by the planning authority as far as land matters is concerned.

Apart from that, SBKS act as a tool for the state authority revenue in terms of premiums, new quit rent which will then binding the landowner by way of notice of 5A. In general, notice 5A is actually a detailed

sum which need to be paid by the land owner and as far as Johor land administration is concerned, all the details are stated in State Land Rules 1994. Hence, with the stipulated payment which need to be paid by the land owner, state authority will then re-alienate the piece of land duly surrendered to the state authority back to the land owner. In order to ensure the security of ownership back to the land owner, it is material to highlight that the surrender would only take place together with the registration of new titles with new land use category. The applicable laws and procedures are in place to ensure the ownership remain with the land owner as SBKS is a mere process but again has its legal binding. Another aspect to highlight is in terms of tenure of ownership in which SBKS become a tool whereby the land owner not only guaranteed to get back his land based on new categories of land use but also as the extension of lease back to its 99 years subject to additional fees or premium to be paid to the state authority. Therefore, SBKS has actually gives an option to the landowners or developers to decide their own land tenure either to maximise it up to the 99 years leasehold and therefore maximising its profit but at the same time offers an additional revenue to the State Authority as well. Not only that, by way of SBKS, it has shorten the period of getting the approval from the state authorities in respect of the extension of the land tenure as SBKS integrated the position as one. Figure 1 shows the procedure of surrender and re-alienation

3.2 THE RELATIONSHIP BETWEEN SURRENDER AND RE-ALIENATION WITH PLANNING PERMISSION

Land development includes a process that is governed by surrender and re-alienation as well as planning standard. This comes under different laws, namely Town Country and Planning Act 1976 and National Land Code 1965 indicating two different authorities. Therefore, reconciliation has to be done. In general, no development shall take place without the prior consent from the local planning authority in the form of planning permission. However, as land is a state's matter, the State Authority holds the ultimate power concerning land matters although it is governed by two different authorities and laws, particularly in ensuring that sustainable development is able to be achieved.

For instance, among other conditions are pertaining to development of affordable homes of 40% from the total components approved in that development. Not only that, the State Authority will then impose the conditions pertaining to the reservation of parks and greens which not only meant as recreational area but also as a meeting point for the community members. As for the preservation to the local people, there is another imposition that requires the allocation of 40% quota which will then be transpired clearly in the issuance of the new subdividing titles. Additionally, in order to ensure that spiritual needs are not left

behind, the State Authority also emphasises on the requirements of worship places not only for the Muslims but for individuals of other religions too like Christianity, Buddhism, and Hinduism in Malaysia. It means, when it comes to the division of land by way of surrender and re-alienation with interference by the State Authority, planning permission has to be materialised to offer value to the developers and to benefit the people and the community at large. This is explained further in Figure 2.

It is pertinent to note the development shall be in conformity not only with the land use specified in the land title but also to the land use specified by the planning authority. Planning control comes under the jurisdiction of the planning authority and conversion of land come under the jurisdiction of the local authority. Therefore, it is relatively concerned with each other. It is commonly understood and binding that the planning approval granted by the local authority must be in compliance with all the gazetted plan namely Local Plan, Structure Plan or even the National Physical Plan. Thereby, a compliance to what is known as planning standard need to be adhered to. It is important to highlight that compliance with all these plan and planning standard is to ensure the sustainability of any development whereby a lot of consideration to benefit the people at large is there. As far as general planning standard is concerned, compliance to all these requirement is to ensure the safety, security, health and basic adequate facilities and amenities. Therefore, in order to achieve this, any development shall be carried requires approval from the planning authority.

Another important note to highlight is in term of complying with the use of land specified in the Local Plan. As this is very much related to the land conversion issues in which any land conversion in any development shall also be in conformity with the land use in the local plan. Nevertheless, it is whether planning authority may refuse to give recommendation for any land conversion. As far as development is concerned, it is pertinent to note that compliance with land use meant both i.e compliance with the use of land means both i.e compliance with the use of land in Local Plan and also land use in the Title.

4.0 CASE STUDY: ECO SPRING DEVELOPMENT SDN BHD

Eco World Development Group Berhad is a public listed Malaysian company primarily involved in property development. The brand is spread across three key economic regions in Malaysia with 20 development projects in total that include new township, integrated commercial development, luxury high-rise apartment, and green business park. The group presently has approximately 8,126.4 acres of land bank with a total gross development value (GDV) of RM87.5 billion. In year 2012, Eco World

pursued two housing projects located at Tebrau corridor in Johor Bahru, a twin eco-townships known as Eco Spring and Eco Summer.

Eco Spring offers cluster and semi-detached residences, whereas Eco Summer's park home series feature a unique front garden concept that connects the living hall with garden (Figure 3). This approval for this development through surrender and re-alienation process. Figure 4 shows the Eco Spring Development site plan. Eco Spring Development project complies with the planning standard and also the development ratio imposed by the state authority which is to provide (i) 40% of low cost housing, (ii) 40% housing for special quota and (iii) 10% of green area and park, and other reserve area. The development condition/ratio is imposed to ensure that sustainable property development can be achieved through providing housing access for all income group. (Sustainable Development Goal) Goal 11: Sustainable Cities and Communities cannot be achieved without significantly transforming the way development and urban spaces should be manage. Making cities safe and sustainable means ensuring access to safe and affordable housing. It is also involves investment in creating green public spaces and other public amenities in a way that fulfils the needs of society.

Based on this case study, it has been successfully proven on how the development condition imposed by the State Authority through surrender and re-alienation benefit the people and the developer inclusively. In this particular development, the number of affordable homes and the concept of development were both materialised. Table 1 shows the number of project based on development ratio that is built by Eco Spring Development.

5.0 CONCLUSION

Among market players, SBKS method is favourable due to its unique approach and the fact that it caters the issues on development approval. The implementation of SBKS allows the State Government to systematically monitor the development plan and process with the integration of all the technical agencies while issuing development approval. SBKS provide a better option to the landowners and developers in term of extending the tenure of ownership, flexibility in term of qualified title rather than rigidity of final title, securing the landownership to the land owner via the concurrent process of surrendering and registering the development land titles. In procedural perspectives, SBKS is not just a mechanism to accelerate the process of development. SBKS is an approach to encourage the landowner/ developer to optimizing the use of their land by mean of conversion of land use categories, subdivision and amalgamation. It is also has indirectly become the tools for development control with the development

condition imposed by the state authority. In this regard, the compliance to the condition imposed will make a way in providing adequate and decent development for all. Besides, sustainable development that can be achieved through SBKS implementation does not just cater on environmental and social context but also ensure property development supply in future. SBKS is not meant to impose constraints to the landowner or developers and not a difficult process to comply. However, SBKS is a process which combines and integrates the two different process, two different authorities and two different laws into one solid purpose to ensure the holistic sustainable land development in the State, in this instance, the Johor State.

REFERENCES

- Ahmad, F., Maidin, S. L., & Zainol, R. (2013). Malaysian development plan system: issues and problems, one decade after its reform (2001–2011). *Journal of Malaysian Institute of Planners (Vol XI)*.
- Awang, A. (1997) Land Conversion, Subdivision and Amalgamation. *Universiti Teknologi Malaysia*
- Cadman, D. (2002). *Property development*. Taylor & Francis.
- Healey, P. (1991). Models of the development process: a review. *Journal of property research*, 8(3), 219-238.
- National Land Code 1965, *International Law Book Services: Malaysia*
- Maidin, A. J., & Ali, B. B. M. (2009). Powers of the local authority in regulating land planning and development control: whither control. *Planning Malaysia Journal*, 7(1).
- Smith, R. M. (1987). From subdivision improvement requirements to community benefit assessments and linkage payments: A brief history of land development exactions. *Law and Contemporary Problems*, 50(1), 5-30.
- Sharma, K. C. (1967). Development planning and development administration. *International Review of Administrative Sciences*, 33(2), 121-129.
- Saadatian, O., Haw, C., Mat, S., Sopian, kamarozzaman, masoud & Salleh Elias (2011). Sustainable development in Malaysia-planning and initiatives. In the 9th WSEAS International Conference on Environment, Ecosystems and Development (EED'11), Montreux Switzerland (pp. 138-143).

APPENDIX

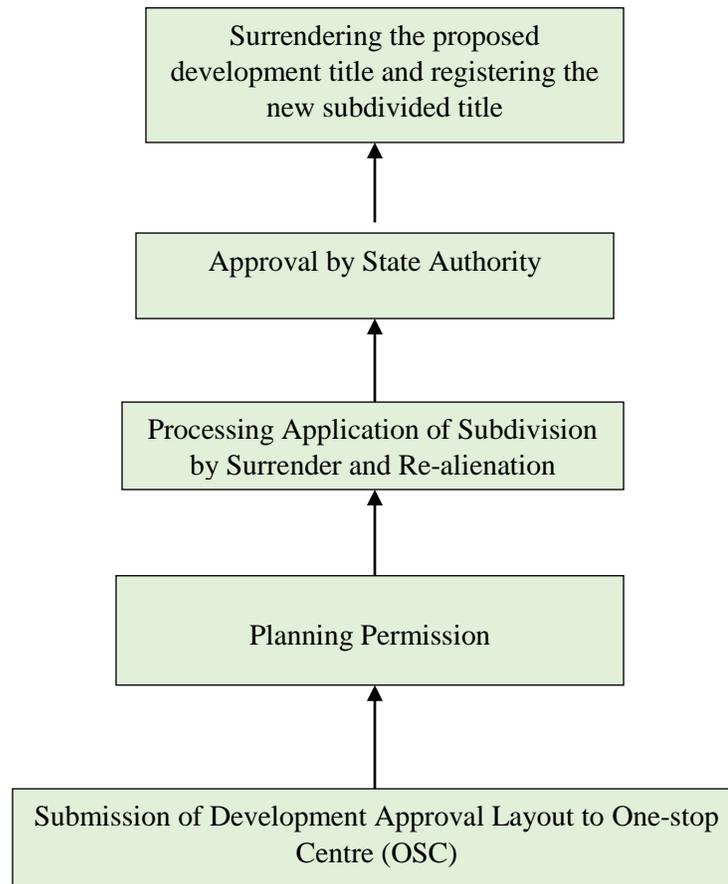
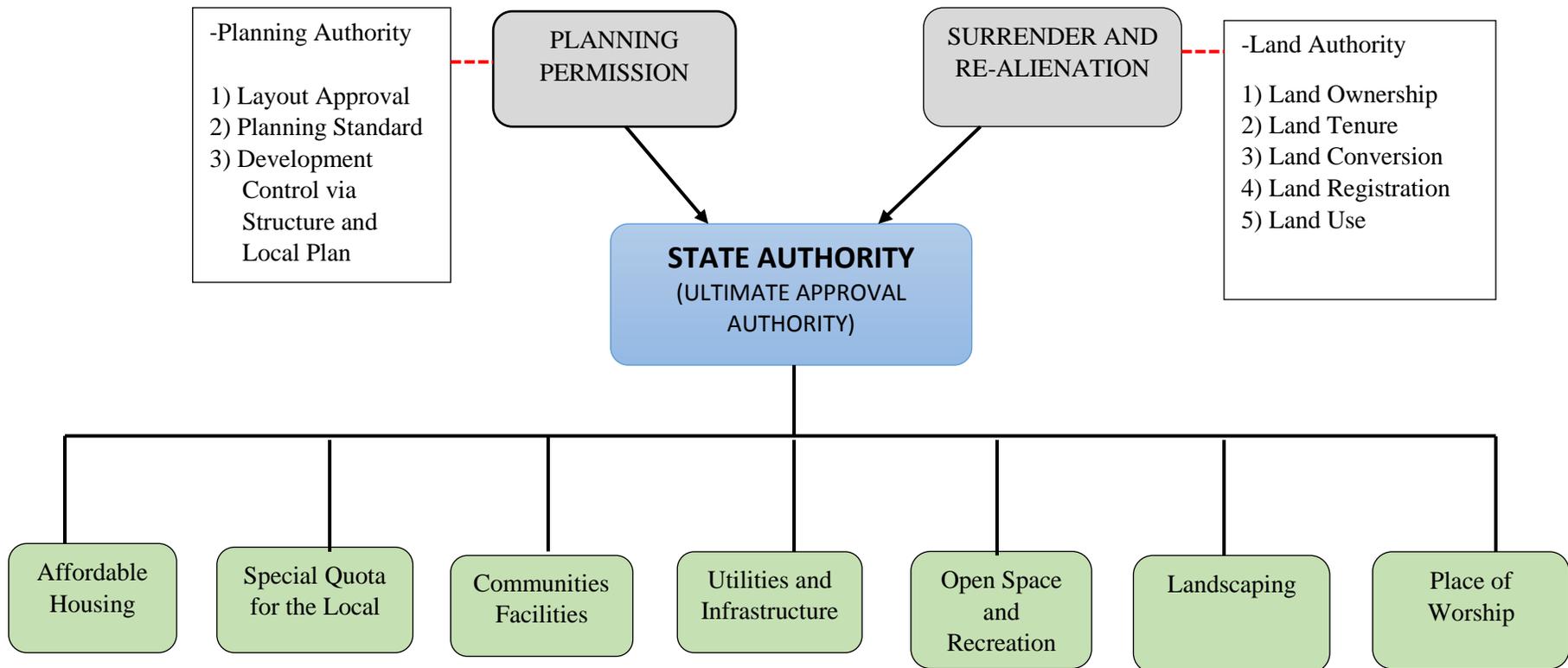


Figure 1: The process of Surrender and Re-alienation Application

Source: Johor Land and Mines Office



The Relationship between Surrender and Land Re-alienation and Planning Permission

Figure 2: The relation between Surrender and Land Re Alienation and Planning Permission under Town Country and Planning Act 1976 (TCPA)

Source: Johor Land and Mines Office



Figure 3: Green area and park at Eco Spring Development

Source: Eco Spring Development Sdn. Bhd.

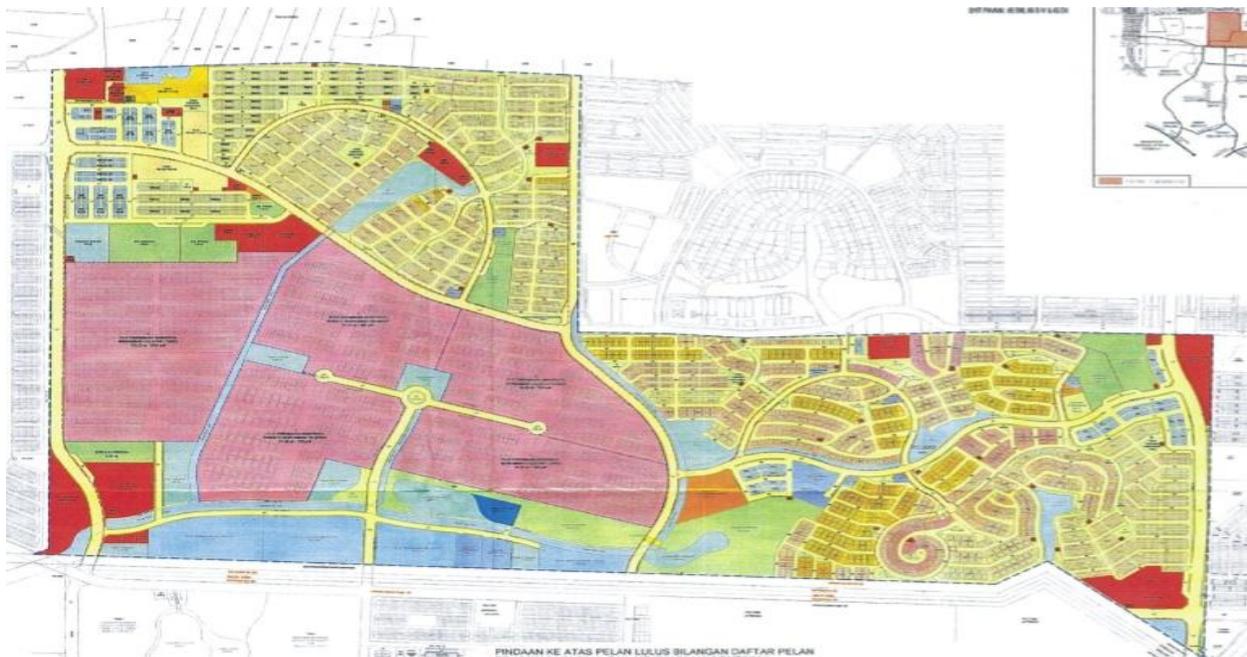


Figure 4: Eco Spring Development Site Plan

Source: Eco Spring Development Sdn. Bhd.

Table 1: Eco Spring Development Sdn Bhd Development Component
Source: Johor Land and Mines Office

DEVELOPMENT OTHER THAN LOW COST	UNIT
Housing and Commercial	3,257
LOW COST DEVELOPMENT	UNIT
PKJ A	271
PKJ B	543
RMMJ	1,086
Medium Low Cost Retail	271
TOTAL DEVELOPMENT	5,428