

Administration of Property Development in Sarawak

Noni Harianti Junaidi* Assoc. Prof Dani Salleh

College of Law, Government & International Studies, Universiti Utara Malaysia, Sintok 06010, Kedah, Malaysia

* E-mail of the corresponding author: noniharianti@yahoo.com

Abstract

Development administration is a very broad concept because its approach is meant to be used to understand the system of public administration in a country. However, the concept of development itself covers many areas such as social development and physical development. The focus of discussion in this paper is presented in the context of physical development that centres on real estate development in Sarawak. This paper is important because it also looking at centralization processes being done by the State Authorities in the aspect of land development in Sarawak. In order to sustain the discussion on the administrative aspect of this real estate development, it will be studied in detail via the allocation of development, and the method and process of how the said development is undertaken. There are several factors that influence the development plan of properties in any particular area, such as factors of politics, history, urbanization, interaction of resources, type of soil, location, and so on. To overcome the side-effects which would occur in the development of a particular area there is a need for controls to be done or taken by the parties concerned. Among some of the development controls that are taken are controls from the legal aspect and from the process of obtaining development approvals. In addition to that, the other parties involved in the process of property development in Sarawak are the State Planning Authority, Land and Survey Department, the local authorities and other technical agencies. Thus, the balancing effect in the process of the development administration itself will lead to the achievement of sustainable development which is also an important factor in ensuring that the planned development will be beneficial to all parties and that it will ensure equilibrium in the environment in order to preserve it. This paper is formed conceptually because emphasis is given to the aspects of the administration of property development that is practiced in Sarawak. Hopefully this paper may able to solve the problems faced during planning and controlling stages in Sarawak.

Keywords: Real estate development; administration; development controls; sustainable development.

1. Introduction

Sarawak is a state in Malaysia that practises the concept of *development politics* in its state development planning system. This concept in general means the implementation of economic development with a focus that will galvanise the economic process of an area. The results obtained from the application of this concept are the growth of new towns and the increase of income among the population living in the same area. This concept emphasizes on the direct construction and development of all aspects that will generate more economic growth to the state government. Similarly, this can also be seen in the prospects within property development, which is an important source to the state's economy.

2. Development Administration Concept

Development administration is defined as the implementation of one form of state administration that is based on development by the bureaucratic institution of a particular country. It is also a branch to the field of public administration and has begun since the 1950s. The approach of development administration also gives a lot of focus on the functions played by the members of the bureaucracy and organisation (Rozalli, 2005). In addition Riggs (1970) also defines it as an administration of development programs through methods used by the government to implement policies and programmes designed to achieve the objective of development and to increase the capacity of administration. Weidner (1964) defines development administration as a form of public administration that has a special objective, such as the purpose of development objectives of a political, economic, and social nature. In this context, it is action-oriented and it places the administration at the centre of the process in achieving development objectives.

Development concept according to Miswan (2009) refers to the activity of transforming or changing a particular space which is the usage of land from a condition that is not or is less productive to one that is beneficial. Furthermore, the Town and Country Planning Act 1976 (172) defines development as;

'the carrying out of any building, engineering, mining industrial, or other similar operation in, on, over, or under land, the making of any material change in the use of any land or building or any part thereof, or the subdivision or amalgamation of lands; ...

Therefore, this paper as a whole will reveal the practise in aspects of development administration in the

context of property development in Sarawak by giving attention to the legal provisions and processes involved. According to Dani (2004), there are two main aspects in the system of land development, which are planning and development control. The first aspect, planning, is the basis of any control in the implementation that will be undertaken. This is because rapid growth in the property sector can contribute to several negative implications if it is done without planning and rigorous control. Among the problems that can occur are the utilisations of town space that is irregular, the growth of squatter settlement that can impede the development of land as well as intensify the problems of pollution in the urban environment.

Second aspect, development control, is defined as a test measure of applications for permissions for the development of, or for changes to the use of land or buildings (change of conditions) that should be in accordance with the development plan (Ibrahim Wahab (1990); Dani 2004)). In other words, it refers to a process that manages, implements, and enforces the development plan of the particular area. Hence the enforcement is based on the policies and regulations that had been provided according to an existing planning system.

The concept of property development is often used together with the concept of property management. Property development is defined as a process that lay plans and development on land for a variety of activities such as construction, housing, agriculture, commerce and so on. Property management, on the other hand, is made up of activities such as planning, project evaluation, construction, property management, and ownership holding.

Property development has three main phases which are the pre-development phase (acquisition), construction phase (production) and post-construction phase (disposal). In the first phase is the process of the identification of a site, or location; the acquisition and conversion of the said land; the boundary survey; the application for planning permits; boundary subdivisions; project proposals; market research; and so on. The second phase of construction involves activities such as land clearing (preparation); preparation of basic infrastructure, buildings, interior and exterior amenities of the said buildings; landscaping; and other aspects of project management. The third phase, on the other hand, involves work activities that are done after the completion of the building's construction, including the issuance of the building's certificate of fitness; the sales of the home or building; the management of the property and facilities; and etc. (Bryne & Cadman (1984) in Miswan, (2009)).

3. Property Development in Sarawak

The system for development planning in Sarawak has its own special uniqueness because any decision to apply for the planning will be made by the State Planning Authority (SPA) and not the relevant Local Authorities (LA). Even so, the LA is responsible for the issuance of a Certificate of Fitness for Occupation (Occupation Permit) as a form of approval for the occupation of a building that has been completed. In addition to the confusing system just mentioned, a problem that often occurs is one that is related to the procedure of the project application. LA is the party that imposes many rules and procedures that burden the developer when they apply for the approval of a planning permit, building plan permit, and occupation permit.

On the other hand, a rapid growth in the property sector has also caused a number of negative implications when done without careful planning and control. Among some of the problems that have occurred are the inconsistent use of city space, the growth of squatter settlements that can impede land development, and the aggravation of pollution in the city environment (Dani, 2004).

Table 1: Statistics on the Issuance of Housing Developer Licenses by Division in the State of Sarawak (2006-2008)

Division/Year	2006	2007	2008	Total
Betong	2	5	8	15
Bintulu	5	13	11	29
Kapit	3	0	7	10
Kuching	31	112	96	238
Limbang	1	5	9	15
Miri	8	30	35	73
Mukah	1	4	2	7
Samarahan	4	26	13	43
Sarikei	10	16	16	42
Sibu	18	69	65	152
Sri Aman	2	10	3	15

Note: Applicable to residential development of more than 8 units

Source: Ministry of Housing Sarawak (2009)

Table 1 above shows the number of housing developer licenses that has been issued from the years 2006-2008 by the Sarawak Ministry of Housing. From this statistic, the Kuching division recorded the highest number of new housing developer licenses, which is as much as 238 licenses; followed by Sibu, 152 licenses; Miri, 73 licenses; and Samarahan, 43 licenses. This clearly shows that housing developers are actively doing development work in urban areas which are rapidly booming.

Table 2: Statistics of Number of Homes Built on New Licenses Issued by Division in the State of Sarawak (2006-2008)

Division	Total (Unit)
Betong	223
Bintulu	559
Kapit	83
Kuching	6862
Limbang	195
Miri	1894
Mukah	70
Samarahan	2071
Sarikei	336
Sibu	1607
Sri Aman	56
TOTAL	13,056

Source: Ministry of Housing, Sarawak (2009)

In the context of housing construction by type, Table 2 above clearly indicates that the Kuching Division recorded the highest rate of construction which comes up to 6,862 units for the period between 2006 to 2008 compared to the other divisions in Sarawak. This is followed by the Samarahan Division which recorded the second highest number in housing construction that is 2,071 units, Miri (1,894 unit), and Sibu (1,607 unit). The rapid development that is being done in urban areas further encourages developers into increasing the number of housing and commercial centre projects from year to year (Sarawak Ministry of Housing, 2008).

In the context of planning for development in Sarawak, one of the main challenges faced is the ability to adapt planning at the state level to the plan at the local level (Othman, 1988). Complaints relating to this matter is often heard and it causes no coordination in the planning process that is to be undertaken. Consequently, the main problem faced by the implementers in the development process is in the coordination of the various parties involved in the implementation of the development program. This matter is also emphasized by Tony (2001) who stated that the implementation of provincial or city plans is also a very complex process because it involves many parties from both the government agencies and private sector. Hence, it is important to ensure that the activities being done can be coordinated properly so that there is no duplication of works relating to the development that is about to be implemented.

4. Factors Influencing the Property Development Plans of Any Area

In the context of property development plans within a particular area, a few factors that contribute to the activities have been identified. Mohd Nazaruddin et.al (2009) lists the following factors as indicated below;

4.1 Political factors

The population density of an area encourages the government to plan for projects such as industrial projects, infrastructural projects, and projects relating to social amenities.

4.2 Historical factors

The historical effect of colonization by foreign powers in the past has brought development in an area such as the colonial buildings they left behind.

4.3 Urbanisation factors

The urbanisation process that occurs will cause an area to grow rapidly. Economic activities in the larger towns and cities will attract the attention of the populace and this in turn will create new towns that will become satellites to the main city or town.

4.4 Factors relating to land use

The efficient use of land will develop an area because it will become the focus of people.

4.5 Factors on interaction with resources

The diversity of resources in an area will speed up the place's development process.

Therefore, by taking into consideration factors such as the ones listed above, the government will actively implement a particular development for the benefit of all parties. In the meantime, the control aspect must be made an important measurement in the implementation of any development that is being planned. The rapid rate of development also has implications on the price of property being offered to buyers whereby it will indirectly become a burden to those who are less fortunate. In fact planning activities for urban development are considered to be the main tool for addressing the issue of sustainable development.

5. Development Control

In any real estate development that is being planned, the control aspects play a very important role. This is because an effective development control will avoid problems stemming from inconsistent development. Effectiveness in the development control will contribute to a balance in the development process that is being implemented. In the context of property development in Sarawak, the control aspect can be seen through existing legislation and process for obtaining permits for a development project.

5.1 Legal Provisions for Property Development in Sarawak

In Sarawak, there are various legal provisions that can be used either directly or indirectly to have an effect on the planning and control of development. These provisions are important mechanisms for the general process of planning control at the state level. In the context of planning practices and development control in Sarawak, the legislation being adopted is different from that which is being practised in Peninsular Malaysia. Thomas (1998) states that this occurs because of the state government's need to coordinate their practises with the factors of change that are happening around them. Consequently, the legislation that is being applied is consistent with the needs of the planning aspects for physical development in Sarawak.

Based on the study done by Bartholomew (1996), planning regulations have long existed in the history on the growth of planning in Sarawak. The first planning law is the Town and Country Planning Ordinance 1952. However, this ordinance has never been adopted as a provision given that its conditions are not practical for the local situation in Sarawak. According to him, this ordinance is an early platform for planning legislations as described;

"an ordinance to make provision for the orderly and progressively development of towns, land and other areas and for other incidental matters...."

In addition to that, the state government has never adopted the provisions in this ordinance because its officers would have been unable to enforce them in any of the situations in the local development scenario in Sarawak. This is because there is no necessity to adopt this ordinance for development control since the Land and Survey Department will usually produce at its headquarters urban plans or blueprints in an *'ad-hoc'* manner to meet future planning needs. This practise, however, is now contrary to the present situation. The reason being, in Sarawak now the practise and administration of land use planning is determined by a number of legislative provisions such as the following:

5.1.1 State Planning Authority Manual 1999

This manual is prepared for the needs and guidance of parties involved in the process of development planning and control in Sarawak, such as government agencies, developers, consultants, LA as well as other statutory bodies who deal with development or boundary subdivision applications as well as those being involved in the preparation of structure plans and local plans that has to be submitted to the SPA. The main objective of this instruction manual is to ensure consistent and careful execution that is according to the requirements of the SPA as well as create a consistent approach in aspects relating to the applications on development or boundary subdivision. This manual is an important guide in the process of development planning in Sarawak. Moreover, among the contents of this manual are the procedures that need to be done in the process of development planning and control.

The provisions of this ordinance also clarifies the administrative guidelines that needs to be followed with regards to the application of boundary subdivision and/ or land development, submission of boundary subdivision plans, engineering plans and other procedures that follow. In addition to that, this ordinance also provides information on procedures relating to the preparation of any development plan. Basically, this ordinance is divided into five parts. Part I is in relation to the Preparation of Plans, Part II touches on the Procedure for Boundary Subdivision and Land Development, Part III is on Land Use (An Activity Control for Commercial/ Business Purposes), Part IV is on SPA Regulations, and Part V describes SPA Policies. Thus, all related aspects need to take into consideration the provisions of the sections in this ordinance.

5.1.2 *Land Ordinance (Subdivision of Land Control) 1954*

This ordinance was once used by the state government within the aspect of development control in Sarawak. However, it was amended and replaced by the Land Code (Amendment) Ordinance 1997.

5.1.3 *Sarawak Land Code Ordinance 1958*

This code is different from the provisions of the National Land Code that is being exercised in the states of Peninsular Malaysia. The Sarawak Land Code 1958 forms a legal structure by stating that the Department of Land and Survey will administer all land in Sarawak. However, the enforcement of this code is limited in the urban planning process because it only gives a provision which allows a change of condition in the land document through a procedure of handover and re-alienation, and it also states that the boundary subdivision of a land is outside the schedule of 'areas for development'.

In the context of development planning and control, Chapter 81 of the Sarawak Land Code 1958 is applicable. For example, Part II of the code is related to the category and classification of land, Part III Section 25 is related to the subdivision of boundary, and Part IV Section 47/48 touches on the reclaiming of land. The main objective of the Land Code of Sarawak is to act as a better legal provision in relation to the aspects of land use. All forms of development have to fulfil the provisions set out by the Land Code of Sarawak 1958.

5.1.4 *Land Code (Amendment) Ordinance 1997, Part 10 Provisions*

This ordinance legally annuls the provisions of the Land Ordinance (Boundary Subdivision Control) in Chapter 82 and makes amendments to the Sarawak Land Code 1958. This ordinance is combined with the provisions of Part 10 of the said Land Code with the procedure and needs for development control. Moreover, the provisions of this ordinance also give guidance in matters relating to the use of land in the State of Sarawak. The provisions in this ordinance further streamline the aspects of planning applications with more care.

5.1.5 *Building Ordinance (Amendment) 1997*

This ordinance is used as an important mechanism for works on building controls by the LA in Sarawak. It combines all legal provisions of small buildings in Sarawak. It is consistent with what have been stated at the beginning portion of this ordinance, which is;

"...an ordinance to amend and consolidate and to make further provisions concerning the laws relating to building in the State, and for purposes connected therewith..."

This ordinance also stress that the submission of building plans is determined by the Building Ordinance 1994 and states that no one can build any building without written permission from the relevant LA. In addition to that, provisions in Section 3(1), 3(2), and Section 8(3) of the Building Ordinance 1994 states that the competent planning authority is SPA which controls all the activities of planning, development, and land boundary subdivision. For that reason, all matters pertaining to the building control must refer to the provisions in this ordinance. This ordinance also clearly states that a number of aspects relating to urban planning also require approval from the Land and Survey Department.

5.1.6 *Development Control Standards 1998*

These standards are used by SPA as a guideline for the arrangement of boundary subdivision and land or building development under the provisions of Part 10 Section 248 of the Land Code (Amendment) Ordinance 1997. Basically, it has been updated and is the version that strengthens the provisions of the Development Control Standards 1968 which was published by the Land and Survey Department of Sarawak.

The provisions of this standard brought forward important matters relating to spatial and physical dimensions that are required for the preparation of an area for development. Other than that, it is also concerned with land and building, as well as ensuring that all those matters are in order, that they had been well-planned, and that the development is sustainable or balanced. This standard also provides guideline and review for regulations related to the processing of applications for boundary subdivision, as well as for changes in land and building use.

Although the scope of this standards provision is only centred on the planning regulations for development control, it also covers important aspects that have not been specified by any other statute previously. Based on the amendments done to the Land Code on November 1997, as well as the establishment of the SPA on 1 August 1998, this standard was again recognized as a key mechanism for works on regulating development.

5.1.7 *Housing Developers (Control & Licensing) Ordinance 1993*

This ordinance is used as a guideline for control and licensing activities for all activities related to housing development in Sarawak. It also includes additional provisions that are related to the main provision of this

ordinance. This ordinance is also used as a control to avoid any issues in housing development such as abandoned projects, environmental management and so on.

Moreover, a few other provisions are also applied in the planning and development process in Sarawak. Among some examples are the Public Parks & Green Ordinance 1993, Sarawak Rivers Ordinance 1993, Environmental Quality Act 1974, Environmental Quality (Prescribed Activities), Environmental Impact Assessment Order 1987, as well as the Local Authority Ordinance (Cap. 117) & Building By-Laws.

6. Development Planning Machinery

In the context of development planning practices in Sarawak, the state government has devised and set up its very own development planning machinery and it is different from the other states in Peninsular Malaysia. The state government through the establishment of SPA has been trying to shape the development planning process in Sarawak with its own initiative. The role of the SPA is in matters relating to the administration of land in Sarawak, namely in terms of development planning and control. For that reason, all aspects relating to the matters of development, regardless of whether it is at the level of state or administrative division, has to go through this authority. This situation has indirectly cause Sarawak to have its own framework for the development planning process.

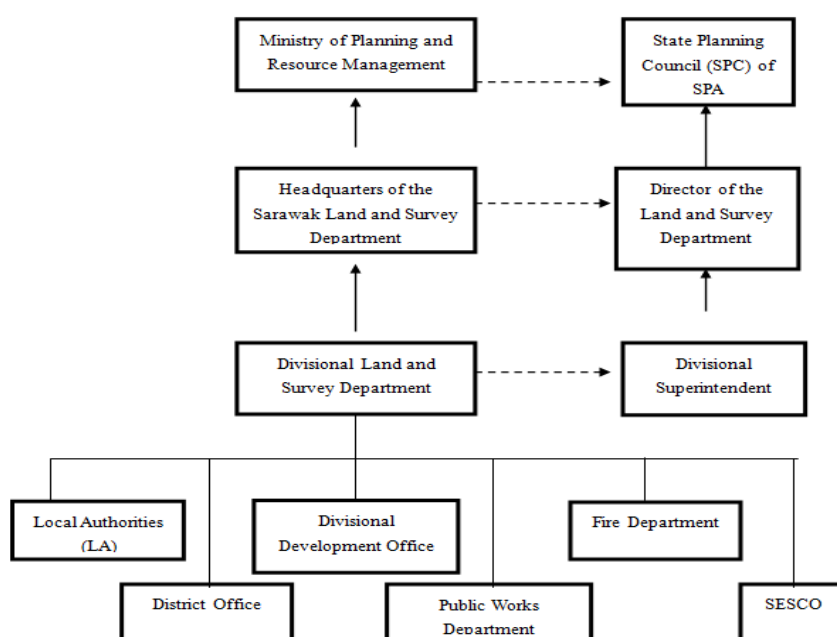


Figure 1: Organisational Structure and the Function of the Development Planning Machinery at the State and Divisional Level of Sarawak.

Source: Researcher’s treatment based on existing regulatory documents.

State development planning is classified into two parts, which are the socio-economic plans and physical as well as development control plans. Socio-economic planning is under the responsibility of the State Planning Unit (SPU). While physical and development control planning is under the responsibility of the SPA and the Land and Survey Department though they are also assisted by other technical agencies such as the LA, District Office, Divisional Development Office, Public Works Department, Fire Department and SESCO. Figure 1 above clearly shows the agencies which are directly involved in the process of development planning.

7. The Processes Involved

The advancement process of development projects involves meticulous care in its planning and implementation. The land development system itself focuses on a process that modifies a particular space as well as forms it structurally for the use of a particular activity. In addition, the development system also involves various agents such as the land owners, developers, consumers, public agencies, as well as financial institutions. All parties involved in the system are associated with the aspects of bidding in the development process. In line with these circumstances development control has also become an important mechanism in the planning to ensure that the type of development being proposed is in accordance with what is listed within the planning regulations (Ibrahim, 1996).

Among the key processes involved in property development planning in Sarawak are as follows;

7.1 *Planning approval process (application for boundary subdivision or development)*

In Sarawak, all applications to obtain planning approval must go through the Divisional Land and Survey Department, the headquarters of the Land and Survey Department in Kuching, as well as the SPA. Approval from the SPA is an important mechanism in the approval process for the planning of a proposed development (Thomas, 1998). The whole process is shown in Figure 2 below.

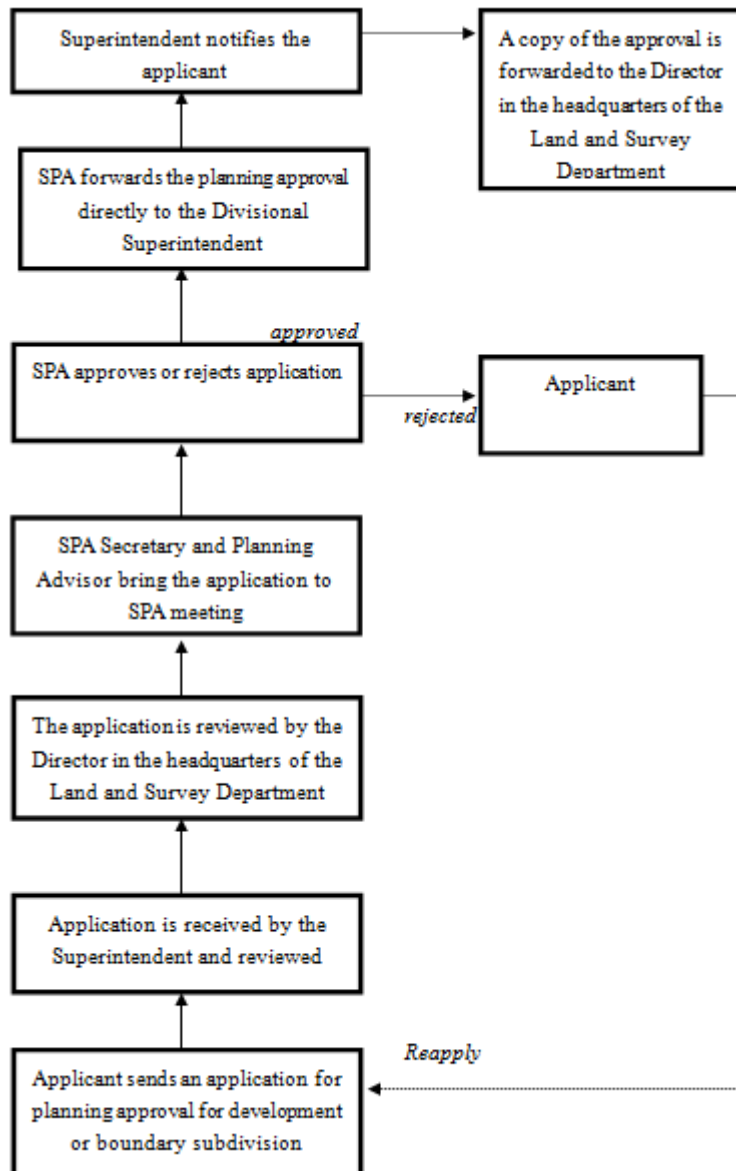


Figure 2: Flowchart of the Planning Approval Process
 Source: Condensed by researcher from DCS 1998.

For the application to obtain approval for development and boundary subdivision planning, a few key stages in the process need to be followed. Firstly, each application must be submitted to the Superintendent of the Land and Survey Department at the Divisional level where the land proposed for development is situated. At this stage, the Planning Officer and personnel of the Land and Survey Department will process the said application. Each application must use its relevant form, which is Form Q that should be accompanied with the prescribed fees. In the case of an application for amendment or when a repeat application is made, the applicant should use Form 'Q'.

The second stage, involves the headquarters of the Land and Survey Department in Kuching and the SPA. Once the application has been processed at the Divisional level, it will be referred to the SPA through the Director in the headquarters of the Land and Survey Department. SPA will delegate the planning function to the

Director of Land and Survey for the purpose of reducing the waiting period as well as to minimise residual work for a particular application process. Then the Director of the Land and Survey Department will comment on matters that have not been commented on by the Divisional Superintendent such as points on general policies and so on.

The next stage will go through the role played by the Secretary of SPA and the Advisor of the Planning Secretariat who will review the applications as well as make recommendations to the SPA after taking into consideration relevant issues such as the verification of the structural plan and local plan, as well as the evaluation of development control. Next the SPA will use special forms to process the application: Form SPA 1A is used for the application of land development and boundary subdivision, Form 1B for land development and boundary subdivision (in housing sites not exceeding 40 units), and Form SPA 2 for the application of boundary subdivision (agricultural). In this context, the care of the SPA in the processing of each application is based on the type and form of development being proposed.

Next, the SPA Secretary and Planning Advisor will bring the said application to an SPA meeting. It should be noted that the whole process being conducted will take up six months before it is approved in an SPA meeting. Here, the said authorities will consider whether to approve or reject the application. After a decision is made, the Secretary of SPA or Planning Advisor will notify the Superintendent of the Land and Survey Department at the Divisional level and forward along two copies of the approved plans, as well as send a copy to the Director of the Land and Survey Department at the headquarters level. After the Superintendent has received the approved plan from SPA, he will notify the applicant. Next the Superintendent will give notice for the payment of fees for the said process to the applicant based on the certificate of approval obtained from SPA.

7.2 Submission Process of a Boundary Subdivision Plan

The submission process for the boundary division plan being practised in Sarawak is clearly described in the provisions of DCS 1998. The process begins when SPA makes a decision on an approved plan, after which the Superintendent will notify the results of this decision to the applicant. Next the Superintendent will send two copies of the letter to the SPA and the Director of the Land and Survey Department, as well as a copy of the approved plan to the Registrar under Section 235 of the Land Code (Amendment) Ordinance 1997 (DCS, 1998).

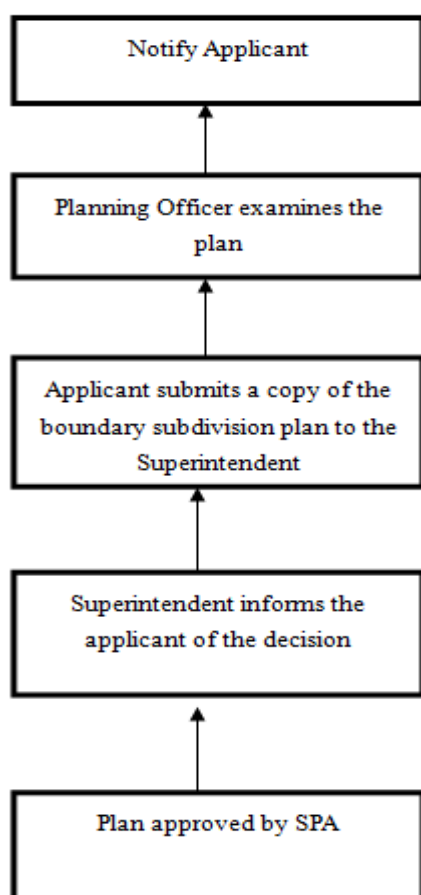


Figure 3: Flow Chart for the Submission of a Boundary Subdivision Plan.

Source: Condensed by the researcher from DCS 1998.

Once the approval for planning is received, the applicant is required to first to submit two copies of the boundary subdivision plan to the Divisional Superintendent of the administrative division where the land will be inspected prior to a further submission of 10 copies of the plan to the same Superintendent. At this stage, a type of form, which is Form R, will be used and all applications must be made by qualified persons. According to Section 227 in the provision of Land Code (Amendment) Ordinance 1997, the definition for 'qualified persons' refers to an individual who has been certified by the SPA in writing to have the required professional qualification or experience necessary for the preparation and submission of boundary subdivision or land development plans. In addition to that, the provisions in the Building Ordinance of 1994 states that 'qualified persons' are registered architects, registered building draughtsman, registered engineers or anyone with a qualification that has been approved by the LA. The fees for the submission of the boundary subdivision plan in Form R must be paid to the Superintendent.

Next, the Planning Officer in the Divisional Land and Survey Department will review the boundary subdivision plan against the compliance plan approved by SPA, as well as make a list of items to verify in order to process the boundary subdivision plan. All the said process of inspection must be in accordance with the provisions of DCS 1998.

Finally, after the Planning Officer has received the boundary subdivision plan, the said officer will issue a notice to the applicant to have him put down his signature on the boundary subdivision plan, and will ensure that the fees has been paid before he delivers his agreement on the plan. Overall, the process flow for the submission of a boundary subdivision plan can be seen in Figure 3 as shown above.

8. Conclusion

Overall, development control is a key mechanism that plays an important role in the planning systems of many countries. This is because of its function in controlling the development and implementation of planning policies from the national to the local level. Other than that, it is also related to the aspects of deliberations and decisions in development control made at the local level which involves strong coordination between organization, procedure, and implementation. The administrative aspect of land development is an activity that requires coordination in all process involved. Good as well as efficient management and administration is the basis for successful planning. The party that implement the plans must realize that they need to master all aspects of administration and the law. With this, the side-effect which may occur can be minimized or avoided. To ensure that the administrative aspect of land development can be implemented at a satisfactory level, the government also needs to introduce various programmes such as the Safe City Program, Smart City and so on. Similarly there must also be controls in place to reduce the effect on the environment in order to achieve the dream of sustainable development.

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