Semua Setiausaha Tetap

Semua Ketua Jabatan Negeri

Semua Pegawai Daerah / Penolong Pegawai Daerah

Semua Ketua Badan-Badan Berkanun dan Agenisi Kerajaan Negeri/
Pihak Berkuasa Tempatan

LAND DEVELOPMENT PROCEDURES 2016
LOCAL GOVERNMENT ORDINANCE 1961
TOWN AND COUNTRY PLANNING ORDINANCE (CAP 141)
LAND ORDINANCE (CAP 68)

OBJECTIVE

1. The objective of this Circular is to implement the decision of the State in relation to:-

   (a) the requirement for conversion of land title conditions stipulated in documents of title before development;

   (b) to accelerate the planning permission process; and

   (c) accelerate the issuance of subsidiary documents of title.
Note: Conversion here involves:

(i) the change of land use (i.e. agriculture to non-agriculture, under Section 54 (Country Land) and Section 70 (2)(Native Land) of Land Ordinance; and

(ii) the exchange of title (i.e. from NT/FR to leases (TL or CL) under Section 75 of the Land Ordinance and Rule 5(4) of the Land Rules G.N. 505 of 1930,

DEFINITIONS

2. In this Circular:-

“BP” means building plan;

“CB” means the Central Planning Board created under the Town and Country Planning Ordinance (Cap 141);

“Conversion” or “Converted” or “Convert” means that permission for the change land use and the exchange of title has been granted by the Minister of Natural Resources as evidenced by endorsement of the document of title or by the Letter of Offer issued by the PTU accepted by the Owner with the premium stated therein as fully paid;

“DBKK” means the Mayor of the City of Kota Kinabalu;

“DP” means Development Plan and includes the layout plan;

“Interim Development Approval” means the zoning or use of land as approved by the Central Board under section 15 of the TCP in the absence of an Approved Scheme;

“JTU” means Jabatan Tanah dan Ukur;

“LA” means any Local Authority created under the Local Government Ordinance 1961;

“Letter of Offer” means the Letter of Offer for Conversion issued by the PTU;
"Leases" mean the Country Leases (CLs) or Provisional Leases (PLs) or Town Leases (TLs) issued under Part II and Part III respectively under the Land Ordinance Cap. 68;

"Outline Plan" means the conceptual design which includes the type of development, building height, road access, development density, proposed land use and land title status. This Outline Plan forms part of the Planning Brief to be included in an application for Interim Development of Land and Conversion in the case where there is no zoning conflict;

"Owner" means the registered landowner by himself or through his architect, other consultant or any other person authorised by the Owner;

"Planning Brief" the content of an application for Interim Development of Land in the case where there is a zoning conflict and include the Outline Plan;

"MNR" means the Minister of Natural Resources;

"NT" means native title or field register (FR) issued under Part IV of the Land Ordinance;

"OC" means the certificate of fitness for occupation issued under the respective Building By-laws of the LA and DBKK and include any temporary or partial OC;

"Planning Permission" means development permission given by a Local Authority to an applicant under Section 15(2)(a) Town and Country Ordinance (Cap. 141) or the approval given for the development plan;

"PTU" means Pengarah Tanah dan Ukur;

"RSP" means Registered Survey Paper;

"TP" means the Town and Country Planner being the Director of the State Town and Regional Planning Department;

"TCP" means the Town and Country Planning Ordinance Cap 141;
"Zoning Conflict" means any situation where the use proposed by the Owner is different from the use in the draft scheme or local plan.

BACKGROUND

3. This Circular seeks to deal with the following issues:-

(a) failure on the part of the landowner to convert the land title conditions of his/her document of title to correspond with the use described in the approved development plans contrary to the provisions of the Land Ordinance (Cap 68) (Section 31(1)(e), Section 54 (country land) and Section 70 (2)(Native Land) of Land Ordinance and the exchange of title (i.e. from NTs to Leases under Section 75 and Rule 5(4) of the Land Rules G.N. 505 of 1930,) of the Land Ordinance Cap.68;

(b) the delay in the conversion of land title conditions and the resulting loss of revenue to the State;

(c) construction and/or completion of development projects without conversion of land use resulting in delay in the issuance of titles for purchasers;

(d) the lengthy process for obtaining approval of development plans from the LA (planning permission); and

(e) delay in the procurement of RSP by the developer/landowner for the purpose of title preparation.

4. The Owner who wants to develop his land must comply with two sets of laws:-

(a) land law (Land Ordinance (Cap 68)) in relation to Conversion of the land title conditions ; and

(b) planning law (Town and Country Planning Ordinance (Cap141) and the Local Government Ordinance 1961).

5. Note that all NTs and CLs are alienated for agriculture use unless the terms in the document of title specify a different use.
6. The planning authority in any district is the LA and DBKK in the case of the City of Kota Kinabalu.

_Town and Country Planning Ordinance (Cap 141)_

4A. Every Local Authority shall be the local planning authority for the area of the Local Authority.

4B. (1) The functions of the Local Authority as a local planning authority shall be –

(a) to regulate, control, and plan the development of all lands and buildings within its area;

(b) ......

7. The reason why there is a reference to the Central Board is because most Local Authorities do not have an “Approved Scheme” under TCP and therefore any development now falls under section 15 for “Interim Development”.

_Town and Country Planning Ordinance (Cap 141)_

_Interim development_

15. (1) Subject to the succeeding provisions of this section, as from the material date no person shall, within the jurisdiction of any Local Authority, carry out any development of land or any construction, demolition, alteration, extension, repair or renewal of any building until six months after an approved scheme takes effect for the area containing such land or building.

(2) A Local Authority may with the approval of the Central Board during any period of prohibition under the provisions of subsection (1), do all or any of the following things, that is to say –

(a) grant to any person applying therefor permission in writing to develop land, construct, demolish, alter, extend, repair, or renew a particular building in the area to which such scheme is proposed to relate;
(b) prohibit the further proceeding with the development of land or
collection, demolition, alteration, extension, repair, or renewal of
any particular building situate in the said area, stating in writing their
reasons for such prohibition.

(3) The Central Board may authorise or instruct a Local Authority to attach to a
permission granted under this section such conditions as it thinks proper.

8. The requirement to convert land title conditions before development is provided in
Section 31(1)(e) Section 54 (Country Land) and Section 70 (2)(Native Land) of Land
Ordinance and the exchange of title (i.e. from NTs to Leases under Section 75 of the
Land Ordinance and Rule 5(4) of the Land Rules G.N. 505 of 1930, of the Land
Ordinance Cap 68

Land Ordinance (Cap 68)

Implied conditions in titles

31(1)(e) any owner of alienated land shall not commence any development on the
land which shall change the use of the land except with the permission of
the Minister.

Land to be used for agricultural purposes only

54. Land which has been alienated under this Part or under similar part of any
previous Land Ordinance shall not be used for other than agricultural purposes
except with permission of the Minister who may impose additional premium or
rent or add or substitute such terms and conditions as he may think fit.

Use of land for agricultural purposes

70 (2) Land (native titles) which is to be or has been alienated under this Part or
under similar part of any previous Land Ordinance shall not be used for
other than agricultural purposes except with the permission of the Minister
who may impose additional premium or rent or add or substitute such terms
and conditions as he may think fit.
**Exchange of title**

75. The owner of a native title may with the consent of the Director exchange his title for a lease under Part II or Part III on payment of the fees prescribed for leases under such Part, and of such premium and rent as may be imposed in each case.

*Land Rules (Section 46) G.N. 505 of 1930*

5(4) The consent of the Director to an exchange of title under section 75 shall be subject to such conditions as the Minister may generally or in special cases direct.

9. In the absence of an “Approved Scheme” gazetted under the TCP, the LA and DBKK are required to obtain the Interim Development Approval from the CB or TP in relation to the approval of a DP (Section 15 among others of TCP).

10. This Circular does not apply where the proposed development is on land within an “Approved Scheme” gazetted under the TCP.

11. The CB/TP’s role is to consider the Outline Plan or the Planning Brief in determining the land use or zoning as a matter of policy. The CB/TP’s role does not involve approval of detailed DP or BP.

**EFFECTIVE DATE**

12. This Circular shall take effect on the 1st June 2017.

**RESTRICTIONS**

13. LA and DBKK cannot issue Planning Permission for any DP or BP over lands that are held under NT or partly under NT until the NT has been converted to Leases (Country Lease (CL) or Town Lease (TL)). However, the LA and DBKK can receive and circulate for technical comments any DP over lands held under NT or partly under NT provided that no Planning Permission shall be issued until the NT (and other lands if within same development) are converted.
14. Notwithstanding the Conversion of the NT, the Developer's Licence and Advertising and Sales Permit:

(a) shall not be issued for residential development on NTs and Leases unless the document of titles have been surrendered for Conversion with memorial numbers issued; or

(b) shall be issued with a prohibition on entering into any Sale and Purchase Agreement until after the NT and Lease has been surrendered for Conversion.

(c) shall not be issued in any event unless a Letter of offer has been issued by PTU for subdivision, amalgamation or conversion has been duly accepted and fully paid.

NO CONVERSION IF TITLE CONDITION CORRESPONDS WITH INTENDED DEVELOPMENT

15. (a) If the land use described in the document of title corresponds with the proposed use applied for in the DP/Outline Plan/Planning Brief, then Conversion is not required for such land.

(b) A native title owner may change the use of his land from agriculture to residential or other use without changing his document of title from native title to country lease. However, such change of use must be approved under Section 70(2) of the LO before the LA/DBKK can process his plans.

CONVERSION WITH EXISTING APPROVED AND VALID DP

16. If the Owner already has an approved and valid DP, then such Owner may use such approved DP to apply to PTU to Convert his lands, where necessary, using the application form LSF100005A.

APPLICATION FOR INTERIM DEVELOPMENT APPROVAL WHERE THERE IS ZONING CONFLICT
17. Application for Interim Development Approval under section 15 TCP through LA/DBKK is now permitted where there is a zoning conflict. The applicant is required to prepare a Planning Brief to be submitted to the LA or the DBKK.

18. The application procedure is as follows (See LAMPIRAN 1):

(a) The Owner applies to the LA or DBKK for Interim Development Approval using a prescribed form prepared by the CB. LA or DBKK immediately records and forwards an application to CB;

(b) The Interim Development application shall include the Planning Brief containing the proposed changes to the zone on the draft scheme plan, proposed conceptual design (including how the land is to be subdivided where such subdivision is planned or amalgamation), type of development, building height, development density (dwellings per hectare for residential developments and plot ratio for all developments), land title status and road access;

(c) If the CB approves the proposed land use applied for then the TP (as the secretariat of the CB) shall issue the Interim Development Approval to the LA or DBKK and a copy to the Owner in the form of LAMPIRAN 3;

(d) The Applicant shall apply for Conversion from JTU using the application form LSF 100005B together with the approved Planning Brief. At the same time, the applicant shall submit DP, BP and all other related plans to the LA or DBKK for onwards processing and technical comments;

(e) When all documents are complete, JTU will compute the premium and submit the application and recommendation to the MNR;

(f) Once the application is approved, JTU will issue the Letter of Offer to the Owner. Upon the acceptance and all premium paid for, the applicant/developer engages a Licensed Surveyor using the accepted and paid Letter of Offer, whom henceforth applies for the RSP and carries out the survey. The applicant may also apply, if relevant, for the Developer's Licence and Advertising and Sales Permit from the Housing Controller;
(g) The LA or DBKK can only grant the Planning Permission, without referring to the CB, if Conversion (change of land use or exchange of title) is completed. Before granting the Planning Permission, the LA or DBKK has to obtain evidence such as the Letter of Offer which has been accepted and premium fully paid or the document of title which has been successfully converted; and

(h) Upon obtaining the Planning Permission, the application has to apply to subdivide the converted title according to the approved DP.

Note: The issuance of Interim Development Approval does not mean the future DP or Planning Brief must be approved.

APPLICATION FOR INTERIM DEVELOPMENT APPROVAL WHERE THERE IS NO ZONING CONFLICT

19. This procedure is only applicable where the land development proposed by the Owner corresponds with the use in the draft scheme or the local plan. In such event, the applicant may make such application to the LA or DBKK to obtain the Interim Development Approval and at the same time to JTU for Conversion. The applicant shall prepare the Outline Plan.

20. The application procedure is as follows (See LAMPIRAN 2):

(a) The Owner applies to the LA or DBKK for Interim Development Approval using a prescribed form prepared by the CB. LA or DBKK immediately records and forwards an application to the CB.

(b) The Interim Development application shall include the Outline Plan containing the proposed conceptual design (including how the land is to be subdivided where such subdivision is planned or amalgamation), type of development, building height, development density (dwellings per hectare for residential developments and plot ratio for all developments), land title status and road access.

(c) At the same time, the Applicant shall apply for Conversion from JTU using the application form LSF 100005B together with the Outline Plan, and supported by a letter/plan from the TP confirming the zoned land use and the information of title.
(d) If CB approves the application, TP as the secretariat of the CB shall issue the Interim Development Approval to the LA or DBKK and forward a copy to the applicant in the form of LAMPIRAN 3. At the same time, the applicant may submit the DP, BP or other relevant plans to the LA or DBKK for onwards processing and technical comments.

(e) When all documents are complete, JTU will compute the premium and submit the application and recommendation to the MNR;

(f) Once the application is approved JTU will issue the Letter of Offer to the Owner. Upon the acceptance and all premium paid for, the applicant/developer engages a Licensed Surveyor using the accepted and paid Letter of Offer, whom henceforth applies for the RSP and carries out the survey. The applicant may also apply, if relevant, for the Developer's Licence and Advertising and Sales Permit from the Housing Controller.

(g) The LA or DBKK can only grant the Planning Permission, without referring to the CB, if the Conversion (change of land use or exchange of title) is completed. Before granting the approval of any Planning Permission, the LA or DBKK has to obtain evidence such as the Letter of Offer which has been accepted and premium fully paid or the document of title which has been successfully converted.

(h) Upon obtaining the Planning Permission, the application has to apply to subdivide the converted title according to the approved DP.

Note: The issuance of Interim Development Approval does not mean the future DP or Planning Brief must be approved.

APPLICATION FOR CONVERSION WHERE THERE IS AN EXISTING APPROVED AND VALID DP AS AT THE EFFECTIVE DATE

21. In the case of application for Conversion where there is an existing approved valid DP as at the Effective Date:-
(a) the Owner applies direct to the PTU for Conversion on the strength of the approved DP;

(b) the PTU will have a prescribed form for such application (LSF 100005A);

(c) The prescribed form will list the enclosures to support the application;

(d) The PTU will compute the premium and submit the application and recommendation to the MNR and will also issue a directive to issue RSP;

(e) If MNR approves the application, the PTU will issue the Letter of Offer to the Owner and will include the terms and conditions imposed by the MNR.

(f) The applicant/developer engages a Licensed Surveyor, whom henceforth applies for the RSP and carries out the survey; and

**OCCUPATION CERTIFICATE ISSUED ONLY AFTER CONVERSION AND ALL SURVEY WORK FOR SUB-DIVISION COMPLETED**

22. It is the intention of the State that Developers must complete the Conversion process as well as all survey work and any other action required for the issuance of sub-divided and/or subsidiary documents of title before the OC is issued.

23. For this purpose all Planning Permissions issued after the Effective Date shall include the terms and conditions stated in **LAMPIRAN 4**.

24. In cases where the CB has given the Interim Development Approval, DPs based on such approval are to be dealt with at LA/DBKK level without need for further reference to the CB.

25. In the case of building subdivisions for the purpose of obtaining subsidiary titles, the following procedure has to be complied:

(a) The Architect or other consultant has to issue a letter or certificate to the LA or DBKK confirming that the “superstructure” has been completed (can be done before the practical completion). Standard guidelines for the certification of the completion of “superstructure” are stated in **LAMPIRAN 5**.
(b) LA or DBKK shall immediately inform PTU once the “superstructure” is certified complete.

(c) PTU will record the certification of completion of the said “superstructure” and the developer or owner through an appointed Licensed Surveyor may apply for the subdivision of the building using Form A (as required under the Land (Subsidiary Title) Enactment 1972) and approve such application (including instruction issued by the RSP) if the documents are complete and in order.

(d) To increase efficiency, reduction of cost and use of paper LA and DBKK are required to produce standard guidelines to allow submission of digital plans. In the meantime building and other plans are to be additionally submitted digitally;

PROCEDURES FOR THE CENTRAL BOARD

26. The Central Board will consider applications for Interim Development Approval from the perspective of:-

(a) policy;

(b) zoning by virtue of any draft scheme or Structure Plan; and

(c) any directives from the State Cabinet.

KEY PERFORMANCE INDEX

27. The respective departments are to complete the various stages of the application for the planning and conversion process in accordance with the timeline stipulated in LAMPIRAN 1 and LAMPIRAN 2.

LAMPIRAN

28. All LAMPIRAN annexed herewith form the essential part of this Circular and shall be wholly complied.
29. CLOSURE

29.1 All Permanent Secretaries of the Ministry, Head of State Department, District Officers / Assistant District Officers, Head of Statutory Bodies and Head of Local Agencies / Authorities are responsible for the compliance of this Circular.

29.2 This circular is effective from 1st June 2017.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

( TAN SRI SUKARTI BIN WAKIMAN )
Setiausaha Kerajaan Negeri

Date: 01 JUN 2017