

Temporary Land Use Permit in Selangor: An Overview of Land Policies and Practice in the District of Petaling, Malaysia

Liyana Zainudin¹, Zaharah Mohd Yusof^{*}, Jaiya Abu²

¹ College of Built Environment, Universiti Teknologi MARA, MALAYSIA

² Department of Director General of Lands and Mines, MALAYSIA

*Corresponding author email: zmy1208@uitm.edu.my

ABSTRACT

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As the leading district in Malaysia, the district of Petaling (in the state of Selangor) has embarked on multiple development strategies towards materializing urban growth and producing main cities. The state's structural plan has selected Petaling to champion urban growth where its three local authorities are required to develop their lands for other than agricultural use. This study will look into how the district implements the use of special temporary permits in regard to temporary land use through specific federal and state government's circulars. Qualitative data analysis through Acts and documents i.e. circulars, local plans and town plans produced by the Department of Director General of Lands and Mines and the Selangor Land and Mines Office were analysed, compared and discussed in regards to achieving urban growth. Findings show that the circulars are not feasible within the context of Petaling and it is recommended that a further study to introduce a new permit for temporary land use for residential, industrial and commercial lands be considered, alongside a flexible policy that complements urban growth.

Keyword: Temporary land use, land use plans, land use policy, temporary permit, urban growth.

INTRODUCTION

According to the Selangor State Structure Plan 2020 (Selangor Town and Country Planning Department, 2007), development activities for its top three local authorities will be based on multi-focus development, a development model theory (Harris and Ullman, 1945), known as the Multiple Nuclei Theory. Based on this model, land use is for activities other than agricultural, i.e., residential, commercial and industrial purposes.

Land use planning is essential for national growth as it is designed to the very niche of the community with given resources, considering their basic personal, social, and economic needs (Thomas, 2001). A greater diversity of land use is possible through the implementation of mixed land use zoning codes, instead of the traditional single-use zoning (Moos et al., 2018). In the case of Petaling, mixed land use is translated through zoning and use class order, and therefore still practices the traditional single-use zoning.

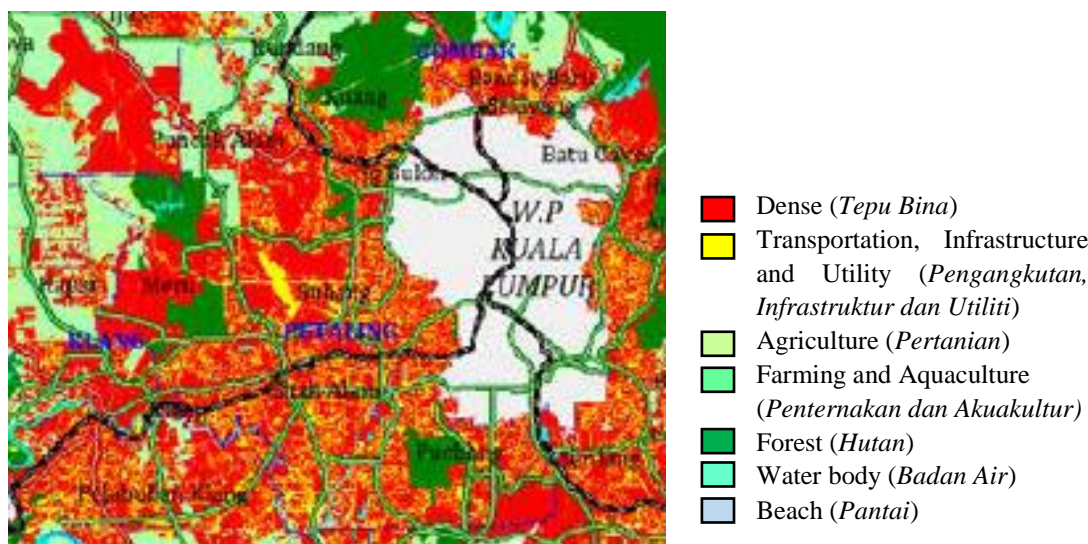


Figure 1: A snapshot of land use tabulation for Petaling
Source: Selangor Town and Country Planning Department (2017)

According to Figure 1, “Dense” area consists of land uses for other than agriculture, namely for residential, commercial, industrial, open space/parks and recreation, transportation, infrastructure, utility, and last but not least, for public amenities. This particular area takes up almost all of Petaling district followed by a more apparent yellow-colour area representing land use for transportation, infrastructure, and utility.

Evidence of nil agricultural land use is also apparent through the three Local Plans of the district’s local authorities i.e., the Subang Jaya City Council (MBSJ), the Petaling Jaya City Council (MBPJ), and the Shah Alam City Council (MBSA). Looking at the MPSJ Local Plan 2020 (*Rancangan Tempatan Majlis Perbandaran Subang Jaya 2020*) of the Selangor Town and Country Planning Department (2010)^a, (MPSJ is now known as MBSJ), the main land use for areas within its administration is residential at 28.53%, followed by transportation at 24.83% and institutional and public amenities at 12.52%. No allocations were made for agriculture land use since year 2010.

In the MBPJ’s Petaling Jaya 1 Local Plan Draft (Amendment 3) (*Draf Rancangan Tempatan Petaling Jaya 1 (Pengubahan 3)*) (Majlis Bandaraya Petaling Jaya, 2018), 35.96% of land use is for residential, followed by 33.34% for infrastructure and utility reserves, and 16.76% for industrial. Whilst in the Petaling Jaya 2 Local Plan (Amendment 2), 17.17% of land use is for residential, followed by open space and recreational parks at 16.12%, and transportation at 15.27%. Both Local Plan 1 and 2 for MBPJ also have nil plans for agricultural use.

As for areas in MBSA, according to the Selangor Town and Country Planning Department (2010)^b, 40.66% of land is for residential use, transportation at 20.32%, 17.6% for industrial use, and lastly nil for agricultural use. All local plans mentioned above have set the most percentage for residential use. A summary of residential, commercial and industry land uses based on local plans discussed above is shown in Figure 2.

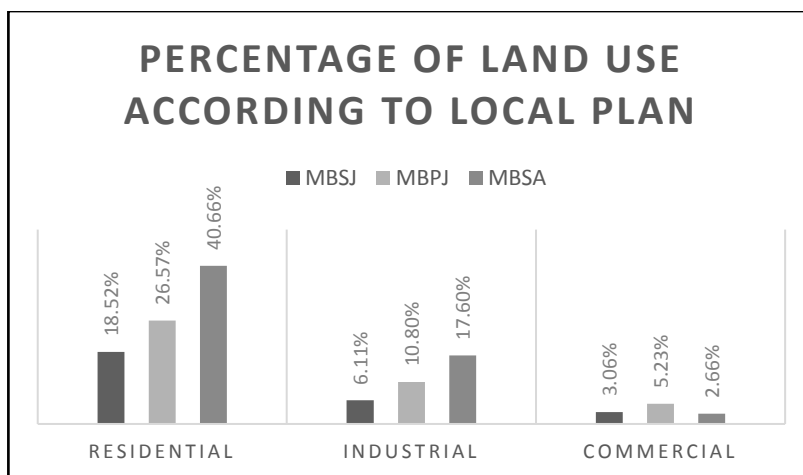


Figure 2: A summary of land use according to local authorities' area of administration in Petaling

LAND USE CONTRADICTION

The first few cases of land use contradictions that were attentively attended to were issues of industrial activities conducted on non-industrial land, specifically on agricultural lands. As Malaysia moves towards becoming a developed country, the state of Selangor is one of the few, which has been selected to champion urban growth and sustainable development. According to Ho and Lin (2004), urban growth requires less agriculture land, which explains the very few to almost nil land use for agricultural means within the Selangor State Structural Plan 2020. The trend of placing temporary industrial buildings on agriculture lands were sought-after and has brought to the introduction of a special permit through the Director General of Lands and Mines Circular No.1/2003 (Jabatan Ketua Pengarah dan Galian Persekutuan, 2003). The circular was also issued based on the power conferred to a State Authority (*Pihak Berkuasa Negeri*), through subsections (f) and (g) of Section 115(4) of the National Land Code 1965 (NLC), where implied conditions spelt includes the use of agriculture land for any other activity than agriculture when deemed fit.

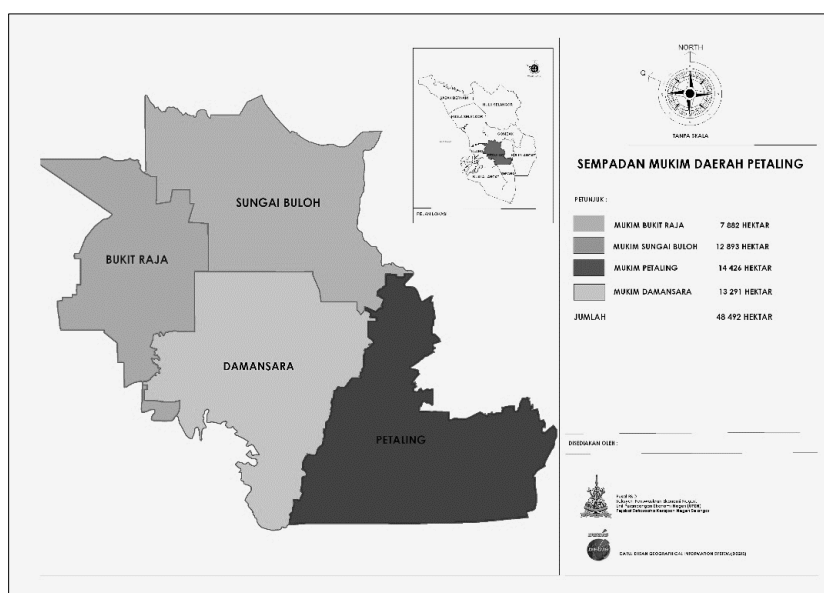


Figure 3: Parish borders within the district of Petaling

Source: Petaling District and Land Office,

<https://www.selangor.gov.my/petaling.php/pages/view/27?mid=114>

It was also ruled that terms and conditions of the permit must be detailed through application forms, fees and et cetera, subsequently presented and approved by the state authority, i.e., the Selangor State Executive Council (*Majlis Mesyuarat Kerajaan Negeri*) (MMKN), before being gazetted in the Selangor Land Rules & Selangor Quarry Rules 2003 (SLR). Not excluded and made mandatory are comments and/or verifications by local authorities and the Town and Country Planning Department, where applicable.

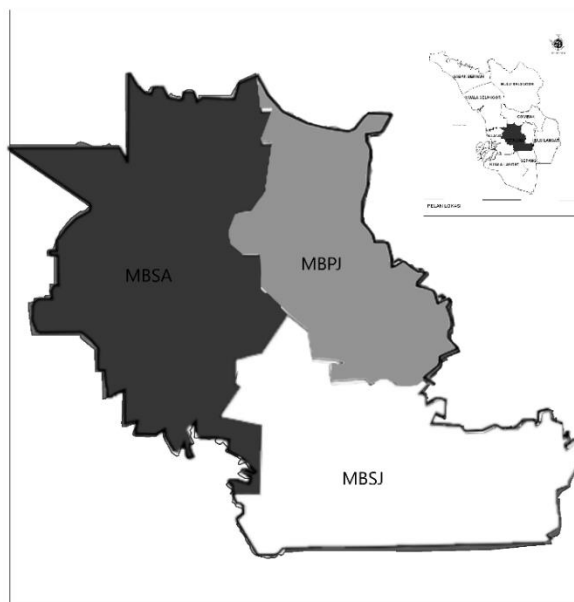


Figure 4: A rough sketch of local authorities' areas of administration within the district of Petaling

The spirit behind this circular is to ease the burden of paying further premium imposed to agricultural landowners when converting their land's express condition from "Agriculture" to any other status, due to the fact that the activities conducted are "temporary" in nature or within a short period of time. However, each local authority defines their own period or term in relations to "short-term" use. Prior to this, the type of short-term activities must be enlisted and approved by the state government and shall be renewable on a yearly basis.

In the event where a breach of permit occurs, landowners are mandated to convert their land use based on the activity conducted, according to Section 124 of the NLC. The binding contract of these permits are spelt through memorials endorsed in the register document of title (RDT), mentioning the validity period and expiration date of the given approved permit. A breach of the permit shall then be construed as a breach of condition under Section 125 of the NLC and liable to land forfeiture under Section 127 of the NLC.

This circular entails procedures of using agriculture land for non-agriculture activities through the use of the said permit, catered for the sole purpose of making a leeway for certain industrial and commercial premises to operate temporarily within a fraction of the said land, and not mandating land conversion. This allowance of temporary land use appears vague in the aspects of a breach of condition within the context of the NLC, where such land use on a temporary basis is not covered within any provisions of the NLC.

The setback of this circular is that it targets those who own the RDT of "Agriculture" lands only, whereas according to the Selangor State Structural Plan 2035 (*Rancangan Struktur Negeri Selangor 2035*) (Selangor Town and Country Planning Department, 2017), agricultural land use has been set to areas outside of the district of Petaling. Over the years, such leniency and flexibility had however brought about unprecedented cases of temporary land use through the Temporary Planning Permission

granted by local authorities; bringing land use to a contradiction in the aspects of express condition as per RDT.

TEMPORARY LAND USE IN THE NATIONAL LAND CODE 1965 AND THE TOWN AND COUNTRY PLANNING ACT 1976

As perfect as town planning goes, in accordance with the state's structural plans, there exists, however, land use that does not match the land title's express conditions as per RDT. For an empirical example, a mini-market (commercial entity) operating on a 'Light Industrial' land and within industrial zoning but operating on a temporary basis. This is something that is found common in the Selangor's local plans, where the Use Class Order stated in the local plans allows such activities through a Temporary Planning Permission under the provision of Section 22(5)(a) of the Town and Country Planning Act 1976 (TCPA); regardless of it being non-conforming to land use as per RDT and as per provisions of Section 120 of the NLC.

Through this provision of the NLC, the state government has further specified types of building and/or activities within each category of land use, through the Director of Selangor Land and Mines Office Circular No. 4/1998 (Selangor Lands and Mines Office, 1998). These types of land categories are on the basis of express conditions used in the Computerized Land Registration System (*Sistem Pendaftaran Tanah Berkomputer*), to which it is being registered and printed on the RDT.

Land administration, according to the United Nations Economic Commission for Europe (UNECE) (in (Williamson, I., Enemark, S., Wallace, J., & Rajabifard, 2010)), is the act of systematically managing land titles based on its value and use, and in accordance to its related policies. Effective and successful land management shall include land tenure, land value, land use, and land development apart from taking into considerations factors of globalisation, social ethics, commitment, human development, and its related institutions (Williamson, I., Enemark, S., Wallace, J., & Rajabifard, 2010).

However, conflict in land use may affect the effectiveness of land management, whereby a lack in policy harmonisation may occur. Issues of conflicts have been on a debate for more than a decade in the state of Selangor where flexibility in land use is assumed as a demand in order to achieve urban growth. Gyourko and Molloy (2015) in (Hortas-Rico & Gómez-Antonio, 2020)), have stated that policies regarding zoning are made by local governments with means to change land use and have quality and quantity control over residential development. This takes us to a conclusion that land use conflicts are not favourable in terms of land management, but the non-conforming nature of temporary land use within the context of urban or city planning needs to be addressed, since land use in Petaling is prioritised for residential purposes.

LAND POLICIES IMPLEMENTATION IN SELANGOR

Supporting the initiatives of the federal government and enforcing the Director General of Lands and Mines Circular No.1/2003 (Jabatan Ketua Pengarah dan Galian Persekutuan, 2003) in legalizing illegal industrial activity, the Selangor state government had introduced the *Legalization of Illegal Factories (KTK) Programme*, which was spelt out through the Director of Selangor Land and Mines Office Circular No. 6/2006 (Selangor Lands and Mines Office, 2006) in July 2006. According to the 2006 circular, a total of 3,156 illegal industry premises had been identified in the state of Selangor. The KTK programme is also aimed at "inviting" land proprietors to convert agricultural lands to industrial status since land conversion through the provision of Section 124 of NLC requires an application and self-willingness.

The apparent difference between the two circulars is that the Director General of Lands and Mines Circular No.1/2003 (*Pekeliling Ketua Pengarah Tanah dan Galian Persekutuan Bilangan 1/2003*)

(Jabatan Ketua Pengarah dan Galian Persekutuan, 2003) aims to legalize temporary building structures that operates only on a fraction of an agricultural land, whilst the Director of Selangor Land and Mines Office Circular No. 6/2006 (*Pekeliling Pengarah Tanah dan Galian Selangor Bilangan 6/2006*) targets at legalising industrial factories with permanent structures on an agricultural, residential or commercial land as a whole, and located within Industry zoning.

For the purpose of surface understanding, the KTK programme offers affected land proprietors a special land conversion rate to convert land use from 'Agricultural', 'Residential' or 'Commercial' to 'Industry', and subsequently allowing Land Office to collect Further Premium (for land conversion) and quit rent as per industrial land use. According to the programme's Standard Operating Procedures, as stated in the Director of Selangor Land and Mines Office Circular No. 2/2007 (*Pekeliling Pengarah Tanah dan Galian Selangor Bilangan 2/2007*) (Selangor Lands and Mines Office, 2007a), industrial premises operating on agricultural land shall be legalized through land conversion and imposed an industrial rate of quit rent.

Prior to land conversion from agricultural use to industrial use, premises registered in the KTK programme must apply for a special temporary permit which is renewable yearly, but for up to three years renewal only. The temporary permit functions as a grace period for property owners to conduct land conversion within the maximum three-year threshold, whilst using the agricultural land for their industrial activities temporarily. It is noted that the quit rent imposed remains at agricultural rate until land conversion has been fully approved and registered in the RDT.

Hence, it can be concluded that within the programme, temporary land use is allowed up to the end of the twelve months special permit period only. Any term longer than that will be a breach of condition and shall be subjected to land forfeiture. Today, after the seventh programme extension in year 2019 through the Director of Selangor Land and Mines Office Circular No. 2/2019 (Selangor Lands and Mines Office, 2019), the number of illegal factories identified and registered for the programme has increased and will be served a notice for a breach of condition under the provision of Section 125 of the NLC.

EVOLUTION OF TEMPORARY LAND USE

Observing the trends of inconsistency in land use and planning, the Selangor Land and Mines Office (PTGS) has since introduced a temporary special permit catered specifically for residential premises conducting commercial and cottage industry activities, particularly those which have obtained operating licenses from the local authority. This permit is granted through provisions of the Director of Selangor Land and Mines Office Circular No. 5/2007 (Selangor Lands and Mines Office, 2007b). The spirit of the circular was to legalize specific use of residential premises (for example, for a kindergarten) and imposing an adjusted rate of rent, in which prior to must be gazetted in the SLR.

However, it was later found out that the special schedule, gazetted within the SLR in regard to this particular circular, was only intended for residential premises involved in the KTK programme and not for all residential premises across the state. Up until today, such adjusted quit rent provisioned through this circular has yet to be gazetted in the SLR and that the circular has also not been put to practice. Through preliminary discussions with the Selangor Land and Mines Office, this circular has not been used due to technical issues with the current Computerized Land Registration System (*Sistem Pendaftaran Tanah Berkomputer*) and will be revised to accommodate all related current and/or future systems.

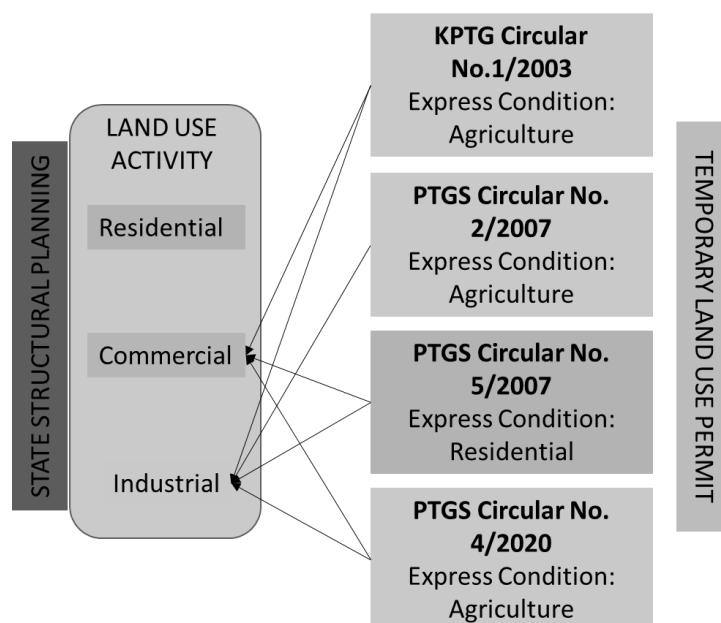


Figure 5: A summary of temporary land use permit for conducting activities other than its respective express condition

Continuing this initiative, the State of Selangor has rolled out the Director of Selangor Land and Mines Office Circular No. 4/2020 (*Pekeliling Pengarah Tanah dan Galian Selangor Bilangan 4/2020*) (Selangor Lands and Mines Office, 2020), where usage for industrial activities on agricultural land is to be legalized by allowing temporary land use through a temporary permit. The temporary permits are given to allow usage of agricultural land for commercial and cottage industry uses, but not withstanding two fifths of the overall land area.

Prior to this, there was a similar initiative as per the Land and Mines Office Selangor Circular No. 5 Year 2007 (Selangor Lands and Mines Office, 2007b), where temporary land use for commercial or cottage industry (*industri ringan*) are allowed but on a residential land only. Such allowances are based on the license granted by the local authorities, where rent is revised to suit land use and license granted.

The Director of Selangor Land and Mines Office Circular No. 4/2020 (Selangor Lands and Mines Office, 2020) is again, however, may be minimally significant as land use within the district of Petaling does not include agricultural lands. This circular, however, may be of full use for districts like Sabak Bernam and Kuala Selangor where most agricultural activities such as palm oil and paddy plantations take place.

RECOMMENDATIONS

The state of Selangor through its various circulars have provided options pertaining to temporary land use over the years and will likely to continue to evolve, as the Selangor State Structure Plan 2020 improvises in parallel to the nation’s urbanization initiatives. As land use for agricultural means have depleted within the borders of the district of Petaling, these circulars as discussed unfortunately have not been used efficiently, as they are only relevant within other districts’ area of administration. In light of the TCPA, temporary land use plays a significant role in championing the state’s structural plans of developing the district of Petaling as a main city. However, the lack of synchronisation between provisions in the NLC to accommodate the TCPA has not only led into an endless argument of a ‘chicken and egg’ nature, but most importantly, this could lead to bigger land issues such as land forfeiture or hefty compounds, as a result of a breach of condition.

It can also be concluded that the use of the circulars discussed are not practical within the context of Petaling due to its inability to suit current and future planning goals. To resolve this issue, the Selangor Land and Mines Office should consider involving the State Town and Country Planning Department during circular drafting so as to maximise state initiatives. And because existing circulars are less effective in Petaling, it is also recommended that a new permit or other mechanism for temporary land use for residential, industrial and commercial lands be considered, alongside a flexible policy that complements urban growth.

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AUTHOR CONTRIBUTIONS & CONFLICT OF INTEREST

Authors have shared knowledge and ideas from the sides of industrial players and academician, balancing theory and real-world practices within the field of land administration and town planning.

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