

The Significance of EIA and DPR in the development process - From the developer's viewpoint

By:

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Introduction

Development process involves several stages starting with the identification of land, doing the feasibility study, application stage and the implementation. The application stage requires developers to deal with various authorities in order to gain what is called planning permission. Sec. 19 of Act 172 provides that no person, other than a Local Authority, shall commence, undertake, or carry out any development unless planning permission in respect of the development has been granted.

The Local Planning Authority (LPA) is empowered by the Act to control the development within their area. This implies that all development has to get approval from the LPA. Private developers therefore, have to submit an application and the LPA may approve it with or without condition, or refuse the application. In granting the planning permission, the LPA will refer to the development plan, planning standards, government policies and other planning requirements. Besides, every application should be made according to certain procedure laid down by the respective LPA.

Development control therefore forms a basis for a LPA to ensure that what is being implemented is according to what has been planned. However, changes and alterations in the plan are inevitable so as to cope with current demand and problems. The developers, who rely on the market trends, will normally apply for development that may be different from what has been allocated in the plan. Thus the element of flexibility in the plan making process needs to be addressed.

Gaining planning permission is not without any problems, and it has been the on going problems and becoming the main issues of concern amongst the private developers. Besides the issue of delays, private developers in Malaysia are beginning to feel that all the requirements associated with the granting of planning approvals are becoming more demanding, which in a way are threatening the viability of a new project.

This can be highlighted with the introduction of various report or studies on certain aspects such as the Traffic Impact Assessment, Development Proposal Reports (DPR) and Environmental Impact Assessment (EIA). This paper however, looks into EIA and DPR only and its significance in the development process, with Johore as the case study. This is just a preliminary study with some view on the implication of the reports on to the developers.

What is Development Proposal Report (DPR)?

According to Sec. 21A Act A933 the application for planning permission should include the submission of DPR together with other documents. Even though it has been introduced in 1995, the implementation or the enforcement is subject to the discretion of the State Government and the capability of the respective LPA. However, as far as the state of Johore is concerned, only MBBJ applies the provision in Act fully where planning permission is being processed and granted by the LPA.

However, the DPR is only required in cases where the land is more than 2 hectares or 5 acres. Besides the granting of planning application, DPR is also needed, (as for the state of Johore) for application through SBKS (Surrender and Re-alienation), conversion as well as for subdivision. The applicant is needed to submit 5 copies of the report together with the application.

Thus, DPR will be one of the references in processing the application. This is because the report is considered reliable as it contains additional information about the proposed development as well the existing situation. Unlike before, this information is not provided in written form but it has to be gathered by the approval body accordingly. The justification for the report has been clearly understood by the decision maker such as,

- To give sufficient information about the proposed development
- To ensure that all relevant matters are made available to the LPA
- To help the LPA in making the right decision based upon relevant material consideration.

The DPR therefore enable the approval body to understand the whole situation with regards to the land as well as the proposed development. The clarification and justification provided by the report can actually expedite the whole process, as most of the information needed has been made available. Furthermore, developers are now required to submit a DPR prepared by a qualified person, which is in accordance with the guidelines. According to the Federal Town and Country Planning Department,

A development proposal report actually involves a technique for the systematic compilation of expert quantitative analysis and qualitative assessment of a project's land use and development viability, including its effect on the surrounding area, and the presentation of result, and the scope for modifying or mitigating them, to be properly evaluated by the relevant decision making body before a planning decision is rendered.
(Co-ordination and Judiciary Unit, Town and Country Planning Department, 1994)

DPR submitted by the developers will also be distributed to various technical departments such as the JPBD, JKR, TNB and STM. Hence the technical department will have access to the same report and their comments and decision will be made based on the information provided in the report and the attached layout plan.

What is Environmental Impact Assessment (EIA) Report?

EIA on the other hand is a report on environmental issues that need to be submitted to the Department of Environment (JAS). Unlike the DPR, EIA report has been enforced and has been made mandatory since 1984 under the Environmental Quality Act 1984. EIA report, prepared by a Consultant has to be submitted to JAS for approval. This means that EIA is the requirement made by the JAS and not the planning authority. Unlike DPR, the applicant needs to submit 15 copies of EIA report, as it has to be examined not only by several Units in JAS but also other related technical departments such as JKR, TNB, JPS, and LPA etc.

EIA will then act as a planning tool in identifying the mitigation measures against any adverse impact on the environment. The purpose of EIA is not to stop the development but it has to be understood that some development gives an adverse impact on the environment. Thus it needs to be controlled or restricted by imposing certain measures in order to overcome the issues of environment in the future.

In other words, EIA report is a study to identify, predict, assess and to provide information regarding the impacts of a certain proposed development on to the environment. The report identifies the mitigation measures that should be carried out before, during and after the implementation of the project. The mitigation measures need to be spell out in their environmental management plan, which form part of the report. In approving the application, JAS will then agreed to all the measures and monitoring will be carried out from time to time.

Nevertheless, EIA is only imposed on development specified under the Environmental Quality Order 1987 that has been known as the prescribed activities. This requirement has been enforced since 1st April 1988. For the case of Johore, EIA report is required by JAS for developments that are considered as prescribed activities and it is applicable not only for the purpose of gaining planning application, but also for the purpose of land conversion.

Thus, EIA has becoming one of the tools to control developments especially the one that has negative impact on to the environment. Besides, it also restricts development in sensitive areas. JAS has been given the full responsibility to look into the report and to carry out a thorough study upon the proposed development and its impact on to the environment. Their comments on the report and its approval are needed before any decision on the application can be made. This means that the approval body will not be granting the permission until JAS have agreed and satisfied with all the mitigation measures outlined in the report.

The Contents of the Reports

Both reports, DPR and EIA, need to be prepared and signed by a professional namely the Town Planner and the EIA Consultant respectively. Basically the information is related to

the site, its surrounding environment and emphasis is given on the proposed development. Thus, the main focus of the reports is to describe the proposed development by giving detailed information as well as its justification. The proposed development will be highlighted comprehensively and the detailed explanation could provide a clear picture and better understanding to the decision maker. Besides putting forward the alternative developments, taking into consideration the surrounding factors as well as the social impact, both reports aimed to convince the approval body that the proposed developments are suitable and good for the public as well as the nation.

Being prepared by the professionals, the report aimed to convince the decision maker by giving a full description of the projects with particulars on the existing situation as well as the proposed development. Besides that, the reports also include some technical details on certain aspects that are relevant to each particular report. As such, the DPR will detail out the development based on the planning standards, its potential and constraints. While the EIA focuses more on its impacts to the environment, which requires technical expertise on various matters that can be gathered from the biologist, chemist, engineers, planners, socialists and etc.

For the purpose of comparison, Table 1 below provides information on the content of DPR and EIA.

Table 1: The Content of DPR and EIA

Content of DPR	Content of EIA
<ol style="list-style-type: none"> 1. Introduction 2. Development concept and its justification 3. Location plan and Site plan 4. Particulars of Title 5. Analysis on issues and potential for development <ul style="list-style-type: none"> - <i>Description on the topography and site slope</i> - <i>Information on existing sewerage, drainage and main roads</i> - <i>Information on road reserved and TIA (if necessary)</i> - <i>Existing land use, natural environment and landscape</i> - <i>Potential features of the site and the surrounding</i> 6. Analysis on land use and the intensity of the development <ul style="list-style-type: none"> - <i>Identification of constraints</i> 	<ol style="list-style-type: none"> 1. Executive Summary 2. Introduction 3. Project Title <ul style="list-style-type: none"> - <i>Title of project outlining the type, size and location of the development</i> 4. Project Initiator & Consultants <ul style="list-style-type: none"> - <i>Project initiator, EIA consultant and other consultants including the name, address, contact numbers and person to whom may be referred to for information</i> 5. Statement of Need <ul style="list-style-type: none"> - <i>Indicate the objectives and reasons for the development</i> 6. Project Description <ul style="list-style-type: none"> - <i>Location of the project site</i> - <i>Size of the project area and parcels of land involved</i> - <i>Project concept outlining rational for development and description of development components</i> - <i>Project schedule</i>

<p><i>and restrictions imposed on to the development based on the zoning, density, building height, plot ratio and plinth area</i></p> <ul style="list-style-type: none"> - <i>Proposed development with consideration given on the planning standards and other restrictions</i> 	<ul style="list-style-type: none"> - <i>Project economic and social benefits</i>
7. Analysis on the surrounding development	7. Project Options
8. Coordination with structure plan and local plan as well as planning guidelines	<ul style="list-style-type: none"> - <i>List of site selection option and development options</i>
9. Alternative of development concept	8. Project Activities
<ul style="list-style-type: none"> - <i>Alternative of development concept with its justification and rationale</i> 	<ul style="list-style-type: none"> - <i>List of main project activities with description of the extent and scope of these activities</i>
10. Proposed development	9. Existing Environment
<ul style="list-style-type: none"> - <i>Based on the development concept, the detailed layout plan is prepared.</i> - <i>Mitigation measures against flooding and any adverse impact on to environment</i> - <i>Social impact assessment</i> - <i>Proposed landscape plan according to the National Landscape Guidelines</i> - <i>Measures to conserve/preserve identified buildings</i> - <i>Proposed Earthwork</i> - <i>Proposed road circulation system</i> - <i>Phasing of the development if applicable</i> 	<ul style="list-style-type: none"> - <i>Physical characteristics of project area</i> - <i>Geological and soil condition</i> - <i>Hydrology and water quality</i> - <i>Air quality and meteorology</i> - <i>Status of noise</i> - <i>Existing land use</i> - <i>Sources of pollution</i> - <i>Terrestrial and aquatic habitats</i> - <i>Flora and fauna species in the habitats</i> - <i>Socio- economy, population, communities, economic activities and employment</i> - <i>Aesthetical value, place of landmarks of cultural, religious or historical significance</i> - <i>Infrastructure facilities</i> - <i>Utilities and services</i>
	10. Assessment of Impacts and Mitigating Measures
	<ul style="list-style-type: none"> - <i>Potential impact</i> - <i>Mitigation Measures</i>
	11. Environmental Management Plan (EMP)
	12. Residual Impacts
	13. Conclusion
	14. References

Source: JPBD

Table 1 outlines the information contained in both reports, which basically describes the land to be developed in terms of its location, land use, surrounding areas, its accessibility and the existing development. Basic information for both reports tends to be similar but the emphasis may differ in order to justify the purpose of each reports.

DPR main concern is to look into the development and its relation with planning aspects such as the zoning and all the planning standards, as well as its impact on the surrounding environment. As a LPA, they have to make sure that the proposed development is suitable and conform to their planning standards, government policies and compatible with to the surrounding uses. The social impacts of the proposed development have also being considered by identifying some of the adverse impact on to the environment. In certain circumstance a separate report on the social impact assessment may be needed.

EIA on the other hand, focuses on the environmental issues looking at the adverse impact and the mitigation measures. Even though DPR may include some social impacts but the depth may not be that extensive as the EIA. EIA tries to identify all the possible impacts, not only related to social but also on the environment as a whole, namely on water, air, noise, flora and fauna.

Both reports may have its own agenda and role to play that justifies its submission to the authority concerned. But, to the developers the requirements of preparing the report can be seen as adding more cost on to their business venture. In addition, there may be question arise whether or not there will be some overlapping or redundant of reports. Furthermore the same technical department may have to look at both reports. Therefore, some issues of concern that relates to the reliability of both reports and how significant are they in the development process should be addressed.

The significance of DPR and EIA: From the developer's view point

As far as the developer is concerned the reports are considered as part of the requirement that needs to be complied. A failure to do so means a delay in the application stage, which will then affect the whole process of development. Realizing this, developers should conform and comply with those requirements by submitting the reports accordingly. In Johore, most application either for land conversion, SBKS, subdivision and planning permission requires a submission of DPR. Besides DPR, EIA may be needed for development that are considered as prescribed activities or identified as sensitive areas or being gazette as areas for marine park.

The rationale for having those reports can be accepted and as being clarified before the report provides the basis or reference for the decision maker. However, it should be noted that there would be an increasing cost incurred by the developers, which can either be absorbed as part of the total cost of development or to transfer it to the end-user in a form of a higher selling price (Rowan-Robinson, 1988). However, problem arises when cost could not be ascertained correctly or anticipated at the very early stage. The developers will then have to bear the extra cost, which finally affects their profit margin. Hence it does affect a developer especially the one with small capital or landowner who is just interested in converting the land use.

As shown in Table 2 and 3, the professional fees paid to the consultant vary according to the land area and the depth of the study, with a minimum payment of RM10,000 for DPR and RM30,000 for EIA. EIA however, requires more detail studies carried out by at least

three major experts in the field of biology, chemistry, sociology, planning and engineering. The cost of preparing EIA is highly influenced not only by the area or the size of the development, but also the types of the proposed development, the number of expertise involved and the depth of each study. Besides, EIA also requires a laboratory to carry out test on the samples of water and air.

Table 2: Rate of professional fees for the preparation of DPR

	Land area	Rate of payment (RM/acre)
1	Not exceeding the first 10 acre	3000
2	Next 40 acres	2000
3	Next 50 acres	1500
4	Next 100 acres	1000
5	Next 100 acres	800
6	Next 100 acres	700
7	Next 100 acres	600
8	Next 500 acres and more	500

Source: MIP: Guidelines for computing professional fees.

Table 3: Estimated cost in preparing EIA Report (housing project)

Elements	Price per unit	Total units involved	Total cost (RM)
1. Water	RM700	3	2100
2. Air	RM 300 – 400	3	900
3. Noise	RM 300 – 400	3	900
4. Sample lab (air)	RM 10 – 30	10	100
5. Petrol			1600
6. Professional fees	RM 3000 – 5000	3 @ 3000 1 @ 5000	14000
7. Management expenses	RM 3000		3000
ESTIMATED COST			22600

Source: Interview with developer

Although these requirements of reports submission have the advantage of ensuring well and properly designed projects, they may have a number of unintended consequences. Von Einsiedel (1993) argued that some regulations imposed large costs on society and subverts their original intent. This is because the increasing cost will affect the developers' interest in land development as this affects the viability or it will lead to a higher price of the end product. For that reason, the imposition of new ruling or requirements has to be fully justified before its implementation.

The reports are significant to the approval body as it provides comprehensive and complete information about the proposed development. On the part of the developers, they will have to comply with the requirement and considered it as part of the total cost of development. However, all the increasing cost in gaining planning approvals will have some repercussion on the developers' interest in carrying out development, especially

when it affects their return. A wide range of regulation and ruling as well as requirements may have some influence on the interest of the developers.

Most developers could understand the rationale of both reports, which may also lead to a fast approval and thus overcome the issue of delays. But, the developers are just entrepreneurs whose role is to oversee the development process so as to ensure completed units are successfully marketed and sold. As economic actors driven by the profit motive, they will only venture into the business if the expected returns are sufficient. But they are being controlled by a number of regulations and rules, and have to comply with all the requirements before getting any approvals.

All these obligations accumulate on the developers' shoulder that will be reflected as extra costs. Due to that there may be developers who perceived that those reports submission are just creating a hindrance to their activity and they really have to consider the planning constraints before they venture into the business. For that reason, there are cases where the developers have to forget the intention of developing the sites, and thus leaving that particular sites remain idle. This perception may not be good as it discourages further development of an area.

Apart from fulfilling and conforming to the requirements, the developers felt that such reports are inviting more and more professional in the development team. Their expertise and services rendered have to be converted into additional costs and should therefore be included in the total cost of development. The developers are happy so long as it does not affect their profit margin. But what is the benefit gained from the increasing costs? Does the proposed development become more efficient, more viable, more comprehensive and more acceptable?

The role of professionals such as the Town Planning Consultant and the EIA Consultant is well noted in providing service to their client. The term of reference as identified by their client need to be properly addressed and delivered. Apart from their professional ethics they are bound to prepare both reports according to the manual specified by the authorities concerned. The consultant firm may have to appoint other professionals to conduct various studies, before preparing the standard reports. The information in the report should reflect the outcome of the study and it should be in line with the needs of the clients. Thus, the consultant involved must not be influenced by other factors that lead him not to disclose some of the facts that may contribute to the refusal of application.

Another issue of concern relating to the submission of these reports is the time factor. The reports submitted need to be examined by the relevant technical agencies. Besides examining the reports, every technical department or agency has its main responsibility as well as other workload. Even though the client's charter has been specified but due to heavy workload, the client's charter could not be met. This will lead to delays and if only one particular agency could not give their comment on time, the whole process will be affected and this will cause further delays.

Thus, instead of enhancing the system by ensuring a faster approval, the requirements of submitting the reports to the relevant technical department have caused further delays. This will be reflected as cost to the developers because to them, time is money. Due to that, the relevant technical department should reconsider the time specified for processing and to acknowledge the urgency as perceived by the developers or the applicant.

Conclusion

The requirement on the preparation of both reports, DPR and EIA need to be fulfilled, as a failure means no permission will be granted. Hence, any developers or landowners have to comply with the requirement imposed by the LPA and the JAS. They will have to appoint and engaged with a consultant who will be the qualified person to prepare the reports accordingly. The consultant, who has been acknowledged as the expert in the area, should therefore provide the service as specified in the term of reference.

The reports prepared by the professional will then become the basis or the main reference of the approval body. The consultant that signed the report should be answerable for all the information supplied in the report. Due to that, the reports must be reliable and capable of providing important facts and information to assist the approval body in making decision. The existence of the reports therefore, helps to secure efficiency and effectiveness of the planning approval process.

However, the new requirement of report submission may have some drawbacks on to the developers who are actively involved in the process of development. The procedure of getting planning approvals has become lengthy, as it needs more time for the consultant to come up with the report and further delays are expected from the technical departments. Besides the time factor, the developers have to incur higher costs in order to come up with a good quality and promising report, from a well-known consultant. It should be noted here that any amendments on the reports submitted not included in the professional fees, but will be charged separately to the developers.

Even though the reports have identified all the possibilities and outcomes of the projects, but they are still subject to its implementation. The consultant may be good in manipulating the data and come up with a very good and convincing report, but how far does the content reflects the reality? Hence, the approval authorities have to play its role professionally and to consider the application comprehensively, as their failure will only contribute to greater inefficiency.