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RE-APPRAISING LAND DEVELOPMENT APPROVAL PROCEDURE THROUGH SURRENDER AND RE-ALIENATION MECHANISM IN JOHOR

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Abstract

The surrender and re-alienation or ‘serah balik kurnia semula’ (SBKS) mechanism in Johor has remained essentially significant for the state authority income. On account of the delay issues that impacted processing agencies and related stakeholders particularly state authority, the purpose of this article is to study the process and procedure conducted by Pejabat Tanah Johor Bahru (PTJB) in processing SBKS applications through (i) Identifying issues and challenges of existing processes and procedures that prevent the application of approval to be done in a timely manner; and (ii) To propose recommendation towards simplification and time-saving approval processes and procedures of surrender and re-alienation applications. From the analysis, there were 11 delay issues found to complete the 20 steps of the process. Thus, recommendations of approval were suggested by approval agencies and related stakeholders conducted in several series of Focus Group Discussion (FGD) as efforts to mitigate the delay issues faced by both sectors and hence accelerate the development process and generate state authority income effectively.

Keywords: land development process, surrender and re-alienation, land development mechanism, delay, state authority income

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INTRODUCTION

Land is the main source of income for the State Government which has an important role in the state economy (UNECE, 1996; Bell, 2006; Yeap, 2018). Averagely, more than 20% or more of the Gross Domestic Product (GDP) of any country is contributed by the land-related activity particularly in real estate and construction industries (UNECE, 1996). In Selangor, land revenue contributed approximately 70% (RM1.73 billion) of the state income in 2016. Meanwhile, 48% of the state income in Penang, Pahang, and Kedah derives from businesses and activities related to land. Land premiums, quit rent, and land transfer fees made up about 60% of the state income for Malacca in 2016. Similarly, 60% of the overall Johor State Government income comes from land revenue. 40% of the revenue generated by land grant premium, surrender and re-alienation (SBKS) premium, land registration fee, and other related services fee are major contributors. In addition, royalties from timber, forestry, and other mineral extractions will assist in increasing the state income, if included (Yeap, 2018).

From the percentage, land is a basic commodity for most economies. Therefore the allocation, use and management of land is vital to country and society (Subedi, 2016). An effective development process and procedure is crucial to ensure that they are always relevant to the current demands and at par with the requirement of all stakeholders involved.

RESEARCH BACKGROUND

Surrender and re-alienation or 'serah balik bermilik semula' (SBBS) is a mechanism to hasten the land development procedure as recognised under National Land Code 1965 under Section 204A to Section 204H of NLC 1965 (Awang, 1991). It involves a process of modification or variation of conditions, restrictions, and categories of land through Section 124 of NLC 1965 that can be done simultaneously with subdivision (Section 135 to Section 139) or amalgamation (Section 146 to Section 150). For developers, the mechanism is significantly advantageous for accelerating land development processes, and prevents the wastage of time to apply those processes separately (Seow, 2019).

However, this procedure involves various agencies and professionals i.e., registered surveyors, planners, the State Authority, the Land and Mine Office, the Land District Office, the Valuation and Property Services Department, the State Secretary Office (Housing Unit), the One Stop Centre (OSC) of Local Authority, and developers. The involvement of these agencies and professionals have given impact on the time taken to process the applications, which is too long and against the objective of the mechanism in expediting the development procedure in a timely manner (Abu Bakar Ibrahim, 2008; Amirul Haffiz *et al.*, 2019).

The implication of the delay in processing the applications has affected the income generation for the State Government due to the failure to collect first year tax payments, registration fees, and premiums for that particular year (Amirul Haffiz *et al.*, 2019; Suhailizan, 2020). In addition, it will increase the development cost for the developer due to the delay in the development schedule (Marzukhi, Omar and Leh, 2012; Ibrahim and Norris Kweku, 2018). It will also raise negative perceptions among the public regarding the efficiency and effectiveness of the Land District Office's service delivery. In the end, the developments planned in the form of residential, industrial, or commercial infrastructure fail to benefit society as a whole.

The purpose of this article is to study the processes and procedures conducted by the Pejabat Tanah Johor Bahru (PTDJB) in processing surrender and re-alienation applications through:

- (i) Identifying issues and challenges of existing processes and procedures that prevent applications of approval to be done in a timely manner; and
- (ii) To propose recommendations towards simplification and time-saving approval processes and procedures of surrender and re-alienation applications.

The outcome of this study is expected to solve the issue of delay in the process of surrender and re-alienation approvals in Johor, as well as minimise the implications of the delay to the stakeholders, particularly the State Government, developers, and society as a whole.

LITERATURE REVIEW

Definition and Practice of Surrender and Re-Alienation Mechanism

From the perspective of land administration, surrender and re-alienation or 'serah balik berimilik semula' (SBBS) is one of the land development mechanisms as recognised under National Land Code. 'Land development' generally refers to the change of original use of any alienated land that affects its restriction of interest, express conditions, and category of land use as opposed to what has been earlier approved by the State Government upon alienation (Azmi *et al.*, 2019). Although 'land development' is nowhere mentioned under the main legislation that governs land throughout the states in Peninsular Malaysia, National Land Code 1965 (NLC 1965) under Division III-Part 7-Chapter 4-Part 9 states that 'land development' or 'land development application' is referred to as subdivision and land conversion (Section 124A), subdivision (Section 135), amalgamation (Section 146), and surrender and re-alienation (Section 203 and Section 204A-H). Meanwhile, Town and Country Planning Act 1976 (Act 172) has defined land development under Subsection 2(1) as '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 land'.

According to Section 204B under the NLC 1965, surrender and re-alienation is defined as ‘surrendering the whole or more adjoining land held under final or qualified titles or combination thereof, owned by the same landowner, provided that part of the land will be re-alienated by the State Authority to the landowner in the form of different parts or units’ (Awang, 1991; Jaiya, 2017; Seow, 2019). The purpose of surrendering the land is to allow the State Authority to convert the land category in accordance with the development proposal and aligned with the gazetted development plan (i.e. from agriculture to building or industry). Then, the land will be subdivided or amalgamated (depending on the development purpose) before the State Authority re-alienates the land to the landowner to allow the development to take place. This will shorten the process of variation of conditions, restrictions, and categories of land which can be executed simultaneously with the process of subdivision or amalgamation according to Section 204A to 204H of NLC 1965.

In Johor, surrender and re-alienation (SBKS) mechanism has been implemented since 1973 (Abu Bakar Ibrahim, 2008; Suhailizan, 2020). According to Amirul Haffiz et al. (2019), the uniqueness of the mechanism practiced in Johor can be distinguished through the use of provisions under Section 197 (with Section 200) and Section 76 of NLC 1965 compared to other states in Peninsular Malaysia that solely use Section 204D. The provision adopted by the Johor Land Administration allows landowners to submit their layout plan simultaneously with the application of amalgamation, subdivision, as well as variation of condition in a single application. The flexibility of the practice has led to the amendments of NLC 1965 in 2017 under the provision of Section 204B which translate some of the approaches adopted by the Johor Land Administration. On the other hand, surrender and re-alienation application can be submitted without having to wait for the final title, rather than using the existing qualified title. It also allows the applicant to choose for the period of lease hold whether to maintain the existing lease period, or to extend the term to 99 years subject to premium applied.

Process of Land Development Approval through Surrender and Re-Alienation Mechanism in Johor

All land development activity is subject to Section 19(1) Act 172 to acquire planning approval from the Local Planning Authority before commencing, undertaking, or carrying out any development work unless permission has been granted pursuant to Section 22 of Act 172 that allows him to carry out development in accordance with the development proposal (section 21A Act 172) and the approved layout plan (Section 21B Act 172) together with the conditions imposed therein. This includes the surrender and re-alienation mechanism that involves physical changes on land due to construction activities, as well as material changes in land use categories.

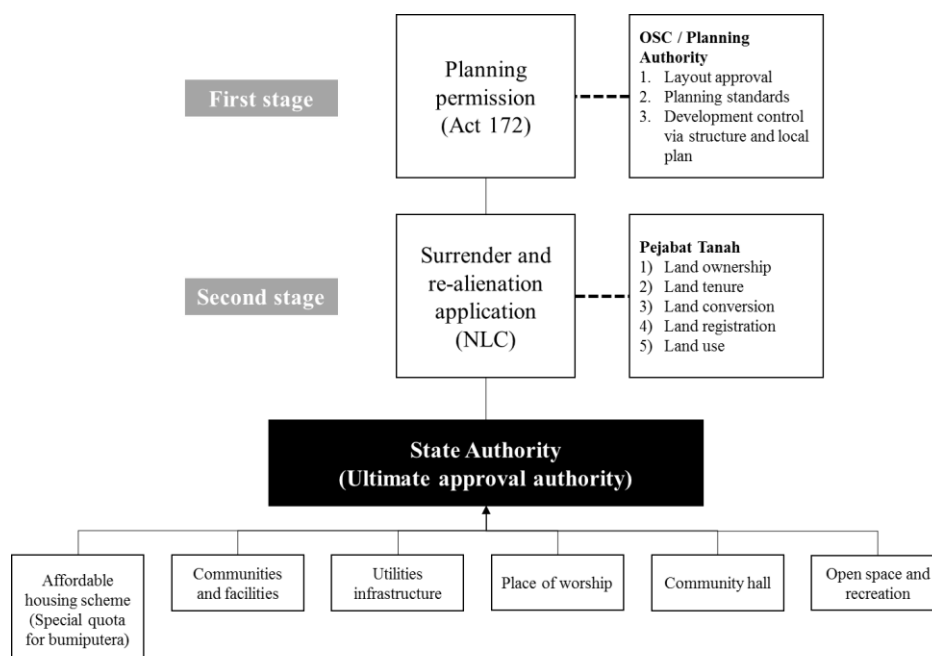


Figure 1: SBKS application process (Azmi *et al.*, 2019)

Azmi *et al.* (2019) have briefly describe the application process for SBKS implemented in Johor. From the figure above, the first stage of the application involved submission for planning permission to the One Stop Centre (OSC) centralized at the local planning authority. The OSC will then distribute the application to all the technical departments. Basically, there are about 10 to 15 technical departments which need to be consulted and to get their technical comments. They are four (4) departments from Local Authority (Planning Department, Building Department, Engineering Department and Health Department), including other external agencies namely Department of Irrigation and Drainage, Fire and Rescue Department, Malaysian Public Works Department, Telekom Malaysia Berhad, Department of Water Supply and Tenaga Nasional Berhad. In this regard, OSC shall stipulate conditions subject to the comments from these technical departments for approval. If the application approved, planning permission will be issued through Form C1. Once planning approval obtained, then it goes to the second stage of process consists of SBKS application at the Land Office. The whole process is expected to be completed within 107 days (Pejabat Tanah dan Galian Johor, 2021).

In this process, the basic understanding about the SBKS process is one piece of land is now intend to be subdivided to multiple pieces according to the proposed development which may comprise of residential, commercial and even

industrial. It may relate to components development that meet with the stipulated zoning, the preservation of green area, road reserve and few others. It means, once the planning permission is fully granted by the planning authority, any development shall proceed with subdividing the land under the SBKS process in which it requires for the consultation from the district land office before it is brought to the attention of the state authority. It is important to highlight that even if the planning permission has been granted at the local planning level according to provisions under Act 172, it does not mean that the development can simply take place without complying the SBKS requirements as highlighted by the Land Office according to provisions under NLC.

METHODOLOGY

This research is focusing on the approval process of SBKS mechanism in Johor. The benchmark of this process is derived from the process to obtain planning permission conducted by Planning Authority. The needs to enhance the effectiveness and efficiency of public service delivery in Malaysia has begun since 1980s. It involves programs to streamline the overall service delivery system, inject dynamism and efficiency in the provision of services as well as to ensure that the capacity and operation of the services provided are consistent and responsive to current conditions (Siddiquee, 2008). OSC was established in 2007 mainly to solve the issue of delay in approval process. With the establishment of OSC as the coordinator of development proposal applications at the local level, the engineering of old procedures has been improved so that the time norm of application processing can be shortened, simplify and streamline complicated and ineffective rules and abolish irrelevant procedures (Kementerian Perumahan dan Kerajaan Tempatan, 2019).

These improvements are in line with the requirements of the Sustainable Development Goals (Goal 16) to build effective, credible and integrity institutions at all levels as well as ensure responsive, inclusive, participatory and representative decision -making at all levels (Marzukhi *et al.*, 2019). At the national level, innovation and reform approaches in the planning service delivery system have been set out in 11th Malaysia Plan which devoted from the people and increased productivity and efficiency of public services through the following strategies.

- i. Strengthen and increase the accountability of local authorities;
- ii. Strengthen service delivery by local authorities through increased integration between the Federal and State Government;
- iii. Streamlining rules and processes to increase the speed of action by the local authorities;
- iv. Strengthen cooperation to stimulate local economic development;
- v. Intensify local community involvement and data sharing.

Based on the spirit of OSC establishment, the Johor Land Administration has taken the same initiative to re-engineer and refine land development processes and procedures to be simpler and times-saving so that the application can be approve in faster, efficient and accurate manner.

To conduct this research, Pejabat Tanah Johor Bahru (PTJB) was selected as a case study due to its high volume of land development applications and delay issues in application approvals. In the first phase, data were collected through first session of focus group discussion (FGD) among staff from PTJB who are directly involved in processing the applications for approval to identify related issues and challenges. Meanwhile, the second session of FGD was conducted to identify the issues and challenges faced by private sectors in submitting the applications to the PTDJB. Both FGDs were conducted in separate session, different date and location due to availability of place and date to discuss. The respondents involved private planners, licence surveyors, and land developers. This research uses purposive sampling to identify suitable respondents to participate in both FGDs as described in the table below.

Table 1: List of respondents involved in this study

Group/ Session	Agency	Job Position of the Respondent	Date and location	Quantity			
1/01	PTJB	3. District Land Administrator	11 April 2021 PTJB	1			
		4. Assistant District Land Administrator (Registration)		1			
		5. Assistant District Land Administrator (Development)		1			
		6. Assistant Land Officer		1			
		7. Draftsman		1			
		8. Chief clerk		1			
		9. Assistant clerk		1			
		1/02		Private sector	3. Licence surveyor	22 April 2021 UTMSpace	1
					4. Private planner		1
5. Developer	1						
6. Lawyer	1						
Total				4			
Total quantity of respondent participation in FGDs				11			

The results were analysed using descriptive analysis to describe the existing processes and procedures that are being practiced in PTJB. Subsequently, issues and challenges of the approval process faced by both sectors were identified along with the process description analysis. As a result, recommendation for improvement towards simplification and time-saving practice of SBKS approval in Johor was proposed to minimise the implications of the delay to the stakeholders.

RESEARCH FINDINGS AND DISCUSSIONS

Issues and challenges of existing SBKS process in Johor Bahru District Land Office

From the discussion with the respondents in Group 1 and Group 2, the issues and challenges of existing SBKS process were identified. First, the planning permission approval acquired from OSC Local Authority has no expiry date. Thus, it gives no sense of urgency to the landowner to continue his application of SBKS at the Land Office. After the application was submitted, only then these issues and challenges were identified.

Firstly, the delay issues could happen due to the late submission of a complete application with payment by the landowner to the Land Office. The late appointment of a licenced land surveyor (LS) by the landowner to manage the application on his behalf at the land office could interrupt the early stage of SBKS process. The second delay occurs due to the time taken to prepare a land report by the Assistant Land Officer. A repetition step of preparing a land report twice was identified. The District Land Administrator has given the comment earlier when the application is being considered by OSC for planning permission approval. However, Assistant Land Officer is required to prepare another land report according to the format for SBKS approval at the Land Office. In turn, the format contains irrelevant information. Thus, the format needs to be reviewed to identify what type of information should be included in preparing the EXCO paper.

Thirdly, the current format of EXCO paper has never been changed nor revised in 35 years, which has caused some of the information required to be unnecessary. As a matter of fact, today's development narratives have changed progressively, not to mention the development that has taken place in the city-class local authority administrative area, as seen in Johor Bahru. It turns out that some of the information included are unrelated. In addition, the delay was also attributed to the preparation of EXCO paper that must be generated manually and through the e-RMKJ system. Both documents need to be read together to align the information obtained. The problem occurs when both documents are received separately, at a different time and date, thus interrupts the open file process by the Development Division of Johor State Director of Land and Mines (PTG Johor).

The next delay issue was then identified when the EXCO paper brought for the approval of the *Jawatankuasa Hasil Bumi* (JKHB) chaired by Menteri Besar Johor is limited in number. In average, only 50 EXCO papers will be presented by PTG in the meeting that includes application of SBKS, land conversion, partition, subdivision, state land, temporary occupation licence (TOL), land reserves, and other related application that requires approval consideration by JKHB. The limitation has put some of the applications on hold and thus drags the time of approval.

The delay issues were also identified when LS takes too much time to prepare a pre-com plan certified by the Chief Assistant Director of Development Division. Preparation of Notice 5A by unskilled clerks may affect the time of approval due to the incorrect amount of premium and other related payment as referred to JPU 94 Johor Land Rules. In addition, time is dragged even longer when it involves a large-scale mix development project that encompasses various types and sizes of development.

The landowner is given 3 months to settle the payment of premium and other related fees for land registration. However, time will be affected when the landowner appeals for a time extension, and is then approved by the District Land Administrator. After the payment of Notice 5A is made, PTD number will be prepared to be given to LS to prepare draft of qualified title (QT). The main issue of delay in this process is to obtain Bumiputera lots distribution certified by the Johor State Secretary Office (Housing Division) that will definitely take some time to acquire. Finally, minor mistakes could happen during the land registration process, such as the wrong spelling of landowner's name which will also cause delay due to the correction that must be rectified according to Section 380 of National Land Code 1965.

Although Pejabat Tanah dan Galian Johor (2021) has stated that the time to complete the whole approval process of SBKS is estimated to be around 107 days, there were still cases facing delay in approval for more than 2 years or equivalent to 730 days. From the discussion, the Figure 2 below illustrates the location of delay found in Step 1, Step 2, Step 3, Step 4, Step 7, Step 11, Step 12, Step 15, Step 16, Step 19, and Step 20 of the SBKS process.

From the described and illustrated process and procedure of SBKS, it is found that there is no specific time frame imposed to guard each of the workflow to be completed in a timely manner. An open time frame that gives no time limit for each of the members to accomplish their task has given room for delay issues to occur. Meanwhile, the action taken by different members in the process has given PTJB no power to control the workflow, except the tasks being administered under the PTJB. Ellis and Keddara (2000) commented that the workflow process is essentially multi-faceted since it is dealing with various members that are usually beyond control. According to Chow (1999), although workflow processes are complex, keen observation and analysis are required to mitigate the issues that occur, and thus improve the process effectively from time to time. Thus, improvement for each task is proposed to mitigate the issues.

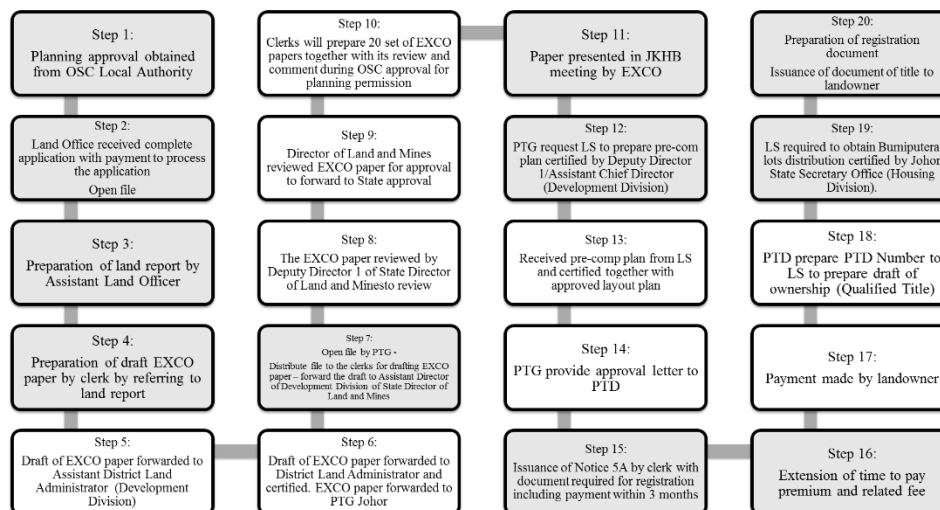


Figure 2: The location of delay in the SBKS process

Recommendation to improve the process of surrender and re-alienation mechanism in Johor

From the issues, the process of SBKS appear to be non-routine workflow that causes the time of approval to become uncertain. Thus, recommendation of improvement was suggested in the FGDs to smoothen the process and mitigate the delay issues faced by both sectors as detailed in the following table:

Table 2: The recommendation of improvement of SBKS process

Step	Issue	Recommendation of improvement
1	Planning permission approval has no expiry date	Application with complete documents and fee must be submitted to the Land Office within 2 months from the date of approval. Respondents agreed to suggest a charge for late submission as a penalty to create a sense of urgency to the applicant.
2-6	Delay in preparing the EXCO Paper by land office	<ul style="list-style-type: none"> i. Respondents suggest that second site visit is no longer conducted by the Settlement Officer (SO), thus the assistant clerk will proceed to prepare the draft of EXCO paper by referring to the land report prepared by the settlement officer during the process when the application is being considered by OSC at local authority for planning permission approval. ii. To provide the knowledge enrichment programme for the multi-level officers and the supporting staff to ensure the accuracy and efficiency in preparing the EXCO Paper. iii. The e-RMKJ system is an online system used in preparing the EXCO Paper for SBKS application. The improvement of the system is crucial to support and expedite SBKS process.

		<ul style="list-style-type: none"> iv. Irrelevance of EXCO paper format needs to be amended to include only relevant information to assist State Authority in making decisions. v. The draft of EXCO paper must be endorsed and forwarded by District Land Administrator to PTG within 10 days after receiving complete application.
7-11	Delay in preparing the EXCO Paper by State Director of Johor Land and Mines Office (PTG Johor)	<ul style="list-style-type: none"> i. The number of papers to be presented in JKHB meeting should not be limited to any certain numbers, but should be presented based on the actual number of EXCO papers that are being processed at that time. ii. The EXCO Papers must be presented to the JKHB within 30 days upon received the EXCO Paper prepared by LA. iii. For small-scale developments, delegation of power from State Authority to Director of Johor State Land and Mines Office is necessary to shorten and accelerate the approval process. iv. To mitigate issues in Step 12 as illustrated in Figure 2, the preparation of pre-com plan by LS must be completed at this stage to avoid delay just before the EXCO Paper presented to the JKHB.
12	Meeting Decision Notification Letter by Clerk of Johor Executive Council	<ul style="list-style-type: none"> i. The e-RMKJ system is an online system used in preparing the EXCO Paper for SBKS application. The improvement of the system is crucial to support and expedite SBKS process. ii. The enhanced e-RMKJ system must be include the online submission of the EXCO Paper to the Clerk of the State Executive Council's Office.
13-14	Meeting Decision Notification Letter by Johor State Land and Mines Office	The issue of delay in preparing pre-com plan by LS is mitigated in Step 7-11 when it is prepared just before the EXCO Paper presented to JKHB.
15	Notice 5A	<ul style="list-style-type: none"> i. Notice 5A fee should be generated through SHTJ 2.0 within 3 working days. This process will not require the assistant clerk to generate the amount of premium manually. ii. For any approval that subject to the imposition of 1% GDV, Notice 5A will be issued in advance (even if the estimated GDV has not been obtained), but the payment of Notice 5A must be accompanied with the payment of 1% GDV. iii. The estimated GDV must be included in the checklist of the documents to be attached during the submission to the Land Office.
16-17	Notice 5A payment	Payment fee of Notice 5A will be charged based on JPU if payment is made within 3 months. The extension of payment period is subject to a certain fee (rates still under review). If payment received later than the stated period, penalty is suggested to be imposed – RM1000/acre as per PTG Circular No. 1/1983 to a higher amount.

18	Issuance of PTD Number	PTD number will be issued within 1 to 3 days after receiving payment of Notice 5A depending on the number of new titles that will be registered.
20	Document preparation for registration and new title registered	<ul style="list-style-type: none"> i. Documents for title registration are submitted within 6 months after payment of Notice 5A is cleared. Delay in the registration process will be subject to a penalty payment calculated based on the first-year tax in Notice 5A and multiplied by the number of years of delay in registration. ii. The registration period is determined by the SSR evaluation criteria as follows: <ul style="list-style-type: none"> a) 1 to 50 titles - 5 days b) 50 to 100 titles - 14 days c) Over 100 titles - 30 days iii. It should be noted that the registration process affects the date of tax payment. For example, if the new title is registered after 1st October to 31st December 2021, then the annual tax will only take effect on 1.1.2023.

CONCLUSION

Surrender and re-alienation is a useful mechanism to assist developers in expediting the land development process. However, they were delay issues identified in the process that requires improvements to prevent developers, landowners, and other related stakeholders from suffering losses due to the late development application approval. From the discussion, it is found that the involvement of various agency and professional has led to the delay issues which taking longer time for approval. Although the delayed issues cause by the external factors and beyond Pejabat Tanah Johor Bahru's control, however measure were taken to minimize the issues through several recommendations that aims to simplify and hasten the process, as briefly elaborated in Table 2. However, the recommendations suggested require further investigation to examine its practicality and effectiveness to solve the delay issues in SBKS approval process and hence accelerate the development process and generate state authority income effectively.

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