

## **Enhancing the Effectiveness of the EIA Process in Hong Kong**

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### **Preamble**

1. The EIA process in Hong Kong has attracted much attention recently and this submission outlines my personal view on some of the issues discussed.
2. Many of the discussions can be boiled down into three issues, namely **timeliness**, **certainty** and **quality** which underpin the effectiveness of the EIA system. By effectiveness, I mean whether EIA can maximize its potential as an environmental management tool and whether it can make a difference to the project design to pre-empt problems.

### **Timeliness**

3. The EIAO has already stipulated the time frame for certain steps of the EIA process, such as exhibition of the project profile, public comments on the EIA report and consultation with ACE. As compared to other countries, the time allowed for these is already very short. It is unlikely that they can be further shortened without compromising on the effectiveness of the process.
4. From the perspective of the proponent, considerable delays can occur if the EIA report is not endorsed by EPD for public consultation, or the report is not accepted for the issuance of an Environment Permit. Should this occur, the questions to be asked are not only whether DEP's decision is justified, but also whether the report is of an adequate quality, and whether the proponent has been signaled that the EIA, unless amended, might be rejected during the study management process.
5. In some circumstances, delays can be avoided by early acknowledgment, in the study process, of potential issues and problems. The earlier these potential problems are recognized and dealt with, the greater is the "solution space" and the less costly the remedies. If problems are not dealt with in the initial stage of the study, project design will gradually firm up, positions will be galvanized and problems will persist. This may ultimately entail in the report being rejected. What is needed therefore is not only early dialog, but dialog with open minds and with the readiness to address potential environmental issues early. To save time, all parties concerned should be encouraged to take small steps in the right direction rather than to take one big final leap, hoping that it is right.

6. Notwithstanding the above, the issuance of Environment Permits in stages is not an answer to expediting infrastructure building. EIA is an exercise to examine whether a project, together with its components, are environmentally acceptable as a whole. It is not in public interest, either financially or environmentally, to embark on parts of a project without knowing whether the project as a whole is feasible. Furthermore, if a project is not considered in its totality, works undertaken in the initial stage may severely compromise the ability of works in subsequent stages to resolve problems. It should also be noted that subdivision of a project into smaller components and assessing each component separately renders the assessment of cumulative effects very difficult.
7. It has been noted that many of the controversies that have arisen recently are related to issues related to choice of sites, alignments and alternative construction methodologies. It is the spirit of EIA that all reasonable and practicable alternatives should be thoroughly studied rather than considered as given. For some projects, there may not be any need for detailed evaluation of alternatives and options. But when projects traverse environmentally sensitive areas, there may be significant gains if the study is further broken into two, with the first focusing on alternatives and options and the second dealing with the impacts of a preferred option.

### **Certainty**

8. Most of the EIA studies undertaken in Hong Kong are project-based. These projects are invariably components of an overall strategy, policy or program. Unless these strategies, policies and programs have been assessed for their environmental sustainability, problems may arise when individual projects are subjected to the scrutiny of the EIA process.
9. It is therefore imperative that the administration should formulate an over-arching infrastructure-building strategy of the territory and subject it to appropriate levels of assessment and appraisal, including that from the sustainability angle. Moreover, it would definitely add certainty to the EIA process if those policies that have a significant bearing on the environment, such as transport and energy, have been subjected to a sustainability assessment. Once the right strategic framework is built, subsequent individual projects will fall into their respective places in the overall framework.
10. It follows then that there is an urgent need for the Government to set up the Sustainable Development Council as early as possible to address policy and planning issues at the strategic level.
11. Many of the controversies are concerned with projects taking place in areas of ecological importance. Uncertainties can be minimized by the formulation of territorial-wide conservation policy, highlighting the priorities of nature conservation in Hong Kong and delineating areas that need to be preserved at all costs. This can remove much of the uncertainties faced by proponents.

### **Quality of EIA Studies**

12. EIAs are undertaken to inform decisions. Our decisions are hence only as good as the EIAs. There are evidences to show that the quality of some EIA reports produced is less than desirable. Poor quality entails not only in inappropriate decisions but also in significant project delays resulting from rejection or amendment of the reports.
13. Poor quality can be attributed to a number of factors, some to the tender and consultancy fee payment systems in Hong Kong. Current practices tend to favour the lowest bidder. Moreover, bidding as a lump sum will result in the consultant doing the minimum rather than undertaking all necessary investigations to resolve or avoid a problem. Not all problems can be anticipated in the bid and some may arise only during the study. Some flexibility has to be built into the fee payment system.
13. The quality of EIA studies can be assured in a number of ways. It is stipulated in a few countries that EIAs can only be undertaken by accredited firms. There is then the question as to whom the accreditation should go - firms or individuals. If individuals are to be accredited, there is then the issue of whether environmental experts, who are not necessarily EIA experts, should be accredited. Most EIA projects are multi-disciplinary in nature and they call for the input of specialists from many different fields and some are not EIA experts *per se*.
14. In some countries, the quality of EIA studies is assured by an impartial, independent and rigorous review mechanism. In the Netherlands, for example, all EIA reports have to be examined by a panel of experts selected from a pool according to their expertise and the reports submitted are reviewed in terms of their accuracy, sufficiency and relevance. It should be noted that the Review Commission does not take part in the study process and the EIA studies are undertaken by the proponents and their consultants.
15. There are distinct advantages if the study remains the proponent's responsibility. Firstly, it facilitates interaction between the EIA study team and the design team. After all, "effectiveness" is about how the EIA can influence project design. Secondly, it sensitizes the proponent and allows them to take on the responsibility, and ownership, of carrying out the mitigation measures detailed in the EIA reports.
16. In short, the effectiveness of the EIA system can only assured by quality reports and quality is best guaranteed by a rigorous and independent review process. The integrity of the review mechanisms can in turn be fostered by a transparent public consultation process. It is important the current arrangement for public consultation must not be undermined in any way.