

For information on
28 January 2002

Legislative Council Panel on Environmental Affairs

Environmental Impact Assessment Mechanism

INTRODUCTION

A number of deputations were invited to attend the last Panel meeting on 13 December 2001 to discuss the environmental impact assessment (EIA) mechanism in Hong Kong. While recognising the significant role the mechanism plays in ensuring that major developments are carried out in an environmentally acceptable manner, the deputations and some Members expressed some concerns on the operation of the mechanism.

2. This paper provides Members with the Administration's comments on the concerns expressed at the panel meeting mentioned above.

THE EIA MECHANISM

Designated projects

3. Under the EIA Ordinance, designated project proponents are required to obtain environmental permits (EP) from the Director of Environmental Protection (DEP) before construction or operation of the projects is to commence. Some deputations raised the concern that the list of designated projects is not adequately comprehensive and suggested that small scale projects that can have a significant impact on the ecology of land of high conservation value should be included in the list. We would like to point out that the list of designated projects set out in Schedules 2 and 3 of the EIA Ordinance include projects that are likely to have a significant impact on the environment. Certain small-scale projects likely to cause an impact on ecologically sensitive areas such as country parks are already on the list. The approach we have adopted in drawing up the list is in line with that adopted under the EIA mechanisms of advanced countries such as the Netherlands, Canada and member countries of the European Union.

Project profile and study brief

4. Under the EIA Ordinance, a designated project proponent may submit a project profile to DEP to apply either for a study brief for the purpose of preparing for the conduct of an EIA study for his project or to obtain DEP's

permission to apply directly for an EP. At the panel meeting on 13 December 2001, the concern was raised that it was unclear to prospective designated project proponents as to how they should draw up the project profile and under what circumstances they could obtain DEP's permission to apply directly for an EP.

5. We would like to draw Members' attention to the fact that the Technical Memorandum (TM) issued under the EIA Ordinance already provides clear guidelines on how a project profile should be drawn up. If project proponents have any questions, the Environmental Protection Department stands ready to offer any clarification or advice. Under the EIA Ordinance, DEP would have regard to the project profile and may permit, after obtaining the Secretary for the Environment and Food's consent, a project proponent to apply directly for an EP where the proposed project is unlikely to cause adverse impact on the environment and the mitigation measures proposed in the project profile meet the requirements of the TM.

6. We have noted the comment of some deputations and Members that study briefs, which should define clearly the objectives and prescribe the detailed requirements and scope of issues to be examined under the EIA study, are too broad in scope. To facilitate project proponents to comply with the requirements under the EIA mechanism, EPD will follow the advice of the EIA Appeal Board on the Spur Line case and will be as specific as possible in drawing up study brief in future. EPD will convene Environmental Study Management Group (ESMG) meetings if necessary to help clarify with project proponents any matters concerning the study brief.

EIA study

7. Some expressed the concern at the Panel meeting about the practical difficulties for project proponents to carry out a comprehensive and detailed analysis of the future design of a designated project in order to conduct the EIA. We should note that the objective of the EIA mechanism is to encourage project proponents to integrate environmental concerns with the planning of the projects at an early stage. Under the mechanism, proponents of designated projects are required to assess possible environmental issues and avoid adverse environmental impact as far as practicable. If avoidance is not possible, mitigation measures should be proposed in the EIA report to reduce the impact to a level acceptable to DEP. This is to ensure that effective mitigation measures will be drawn up and duly implemented before commencement of works to avoid irreversible damage to the environment. In granting an EP and considering the conditions that should be imposed on the permit, DEP will have regard to the mitigation measures proposed by the project proponent in the EIA report. If the EP holder finds it impracticable to comply with any conditions imposed by DEP on the permit, there is a provision in the EIA Ordinance allowing application for variation of EP conditions.

8. A deputation raised the concern over whether or not aesthetic

assessments are included under the EIA mechanism. To facilitate project proponents to fulfil the statutory EIA requirements, the TM sets out the principles, procedures, guidelines and criteria for the conduct of EIA. An EIA study should cover all possible impacts on the environment and, depending on the nature of the project and the circumstances of the proposed project location, different impact assessments including landscape and visual impact assessment would be required.

9. Consideration of alternatives is also one of the main concerns raised at the Panel meeting. Under the TM, a designated project proponent is required to consider reasonable and practicable alternatives if a project is likely to result in adverse environmental impacts. It is the project proponent's responsibility under the EIA Ordinance to show what alternatives have been considered, how environmental factor plays a part in the selection process, and justify the reasons for selecting the preferred alternative. The EIA report will then be subject to review by EPD, relevant authorities, the public and the Advisory Council on the Environment (ACE). The ultimate objective is to ensure that with the proposed mitigation measures, the adverse environmental impacts of the project can be avoided or, where avoidance is not possible, reduced to an acceptable level.

Issue of environmental permits

10. One of the deputations suggested that designated project proponents, depending on their programming needs, should be allowed to apply for EP in stages to cover different phases or construction processes of a single project. The existing EIA mechanism already allows this. However, this does not mean that the EIA of the project can be completed in stages. On the contrary, the EIA of a designated project must be covered in one full report so as to provide a clear picture of all the possible environmental impacts arising from both the construction and operation of the project. Only in this way can we check in a comprehensive manner that the project as a whole is environmentally acceptable.

11. As regards the criteria for granting or refusing an application for an EP, Section 10 of the EIA Ordinance stipulates clearly that DEP shall have regard to the following –

- (a) the approved EIA report on the register;
- (b) the attainment and maintenance of an acceptable environmental quality;
- (c) whether the environmental impact caused or experienced by the designated project is or is likely to be prejudicial to the health or well being of people, flora, fauna or ecosystems;
- (d) any relevant TM;
- (e) any EIA report approved under this Ordinance or any conditions in

an approval; and

- (f) the comments, if any, submitted to him during the statutory public inspection period on the EIA report.

The TM also sets out detailed guidelines to facilitate project proponents' compliance with the EIA requirements and for DEP to exercise his statutory authority during the EIA process including the issue of EP.

THE EIA PROCESS

Public involvement

12. Some deputations stressed the importance of public involvement in the EIA process. We fully agree with it. The EIA Ordinance provides an open and transparent EIA process. Members of the ACE and the public can raise their comments with DEP on the project profile and the EIA report during the respective public inspection periods. DEP needs to take those environment-related comments into account when drawing up the study brief for the conduct of the EIA study and when deciding on whether to approve the EIA report. In the event that conflicting opinions are received during the statutory public inspection period, EPD will analyse the comments, consult the relevant authorities and determine their validity having regard to the requirements set out in the TM.

13. In order to enhance public involvement and facilitate early identification and resolution of potentially contentious environmental issues in the EIA process, EPD always encourages project proponents to initiate early dialogue with the public, ACE and various stakeholders. Although project proponents may not be able to provide all the requested information especially when the full EIA study has not yet been completed, such communication would enable a better understanding of the project and facilitate the identification of major environmental issues at an early stage.

14. Some deputations asked about public access to information related to EIA reports. In fact, all documents processed under the EIA Ordinance including project profiles, study briefs, EIA reports and EPs issued are available for public inspection in the EIA Ordinance Register Office and on EPD's website. In addition, as mentioned in paragraph 12 above, there are statutory public inspection periods for project profiles and EIA reports.

Communication and co-ordination

15. Apart from encouraging early public consultation, EPD will convene ESMG meetings with project proponents and will involve other relevant authorities where necessary to examine possible environmental problems the

designated projects are likely to give rise to and to draw up effective mitigation measures, even before the statutory EIA process begins. The purpose is to facilitate the compilation of the EIA report to better meet the environmental standards. In addition, EPD has set up four Users' Liaison Groups with Government departments, private and public corporations, consultants and contractors since 2000 to enhance communication and coordination on EIA matters. It is generally accepted that good communication is the key to success in implementing the EIA process in a certain, efficient and timely manner.

16. Moreover, other than facilitating private sector designated project proponents in the conduct of EIA, we have introduced a number of new measures recently to improve coordination within Government on EIA-related matters. First, without compromising its statutory functions under the EIA Ordinance, EPD has strengthened its advisory role throughout the EIA process by providing advice to works departments/agencies (e.g. KCRC and MTRC) in a proactive manner. The purpose is to help them identify potential environmental impacts and work out effective mitigation measures to avoid, or if it is not possible, to mitigate the impacts to acceptable levels at an early stage. Moreover, to avoid conflicts resulting in deadlocks at the working level, EPD and works departments/agencies staff are now required to escalate issues that could not be satisfactorily resolved to their senior management at the earliest possible stage. To further facilitate the EIA process, EPD will prepare more detailed guidance notes and organize more training sessions, seminars and liaison meetings to familiarize project proponents, consultants and contractors with EIA procedures and requirements, and to share experience. With these improvement measures, critical environmental problems can be identified and tackled at an earlier stage. This in turn can enhance the certainty of the EIA process – a point that was raised by some deputations at the Panel meeting.

Streamlining the process

17. The existing EIA mechanism seeks to strike a balance between the need to protect the environment and the development needs instead of posing any unnecessary obstacles to development projects. Statutory time limits are imposed for the completion of each step under the EIA Ordinance including issue of study brief, approval of EIA report and issue of EP. To expedite the delivery of public works programme, the Administration, with ACE's consent, has recently revised the administrative procedures to allow proponent departments the choice to gazette projects under other Ordinances before completion of the EIA process.

QUALITY AND INDEPENDENCE OF EIA REPORTS

18. Under the EIA mechanism, a designated project proponent is held fully responsible for all EIA issues related to the project. This is in line with the polluters-pay-principle and consistent with the established practice in other

countries such as the Netherlands, Canada and member countries of the European Union. Moreover, giving project proponents the responsibility to undertake EIA studies can promote greater ownership of environmental responsibilities including their commitments to implement mitigation measures proposed in the EIA reports. The current system of allowing a two-stage consultation period in the EIA process and vetting of EIA reports by DEP and other relevant authorities have already provided sufficient safeguards to ensure the quality and impartiality of EIA studies. Hence, we do not see the need to set up an EIA Commission to conduct EIA studies.

19. Moreover, if we were to set up an EIA Commission to take charge of conduct of EIA studies, the consultants appointed by the Commission would not be responsible to the project proponent. As such, they would not have a role to play in according adequate attention to the project proponent's concerns including the project objectives, costs, work schedules, etc. The mitigation measures proposed by the consultants so appointed might not be acceptable to the project proponent. As a result, the EIA report the consultants produced might not dovetail with the project proponent's plan. This would lead to uncertainty in the delivery of the project concerned.

20. Regarding the suggestion of setting minimum qualifications for persons undertaking EIA studies, we consider that this is not practicable. EIA is a multi-disciplinary study involving a wide range of expertise and professional disciplines. The types of expertise and professional disciplines involved also vary among projects depending on the types and complexity of the environmental issues involved. Overseas expertise is very often required. It is therefore very difficult, if not impossible, to specify the qualifications and experiences of personnel undertaking EIA. Above all, it may restrict the flexibility and limit the types of expertise available to conduct a good quality EIA report.

21. Over the past years, EPD has closely monitored international developments on this issue. Up to now, there is no advanced country that has a statutory system of registering the qualification and experiences of personnel undertaking EIA. The international trend is to rely on strengthening the following mechanisms to assure the quality of EIA reports –

- formal review of EIA by relevant authorities;
- review of EIA by formal advisory bodies;
- public review of EIA;
- capacity building and training; and
- issue of guidelines for the preparation and review of EIA reports.

In Hong Kong, we are adopting a similar strategy to ensure and improve the quality of EIA.

22. At the Panel meeting, doubt was cast on the adequacy of expertise

within the Administration to vet EIA reports. We would like to point out that, for the examination of EIA reports and monitoring of compliance with EP conditions, DEP is supported by departments that are specialized in their respective professional fields of work and which officers possess relevant qualifications and experience.

23. As regards the management of consultants for government projects, the consultants' performance is regularly assessed through an appraisal system to ensure that they perform their duties in accordance with the consultancy agreement and brief.

24. We have noted the concern raised at the last Panel meeting that the existing tendering system would favour low price bidders and that would compromise the quality of EIA reports. We would like to draw Members' attention to the fact that, under the Government consultancy study tendering system, bidders are required to submit their technical proposals and fee proposals in two separate envelopes. Technical proposals are assessed against a set of predetermined criteria in the first instance. As a second step, we would consider the fee proposals of only those bidders whose technical proposals have been accepted by us. Selection of the bidder to whom the contract will be awarded is based on a marking scheme, under which a weight of normally 70% or 80% is given to technical proposals, versus 30% or 20% for fee proposals. The bidder with the highest combined score will be selected for the consultancy. We believe that the present consultants selection system already provides for balanced consideration between quality and price.

25. Concern was raised at the last Panel meeting that the conduct of EIA as part of an engineering design consultancy may lack independence and may not be given due importance. However, even forming part of the engineering consultancy, EIA studies are in fact conducted separately by professionals of the environmental discipline and hence are independent from other parts of the consultancy. Above all, all EIA reports would be assessed against the same stringent environmental standards and are subject to comments by the public and ACE. As conducting EIA study as part of an engineering design consultancy may better integrate environmental concerns with the planning and design of the project, and facilitate assessment of the feasibility of the proposed mitigation measures and their implications, we do not see a need to regulate this practice.

ENFORCEMENT

26. We agree with the point raised at the last Panel meeting that compliance with EP conditions is also important to ensure the effectiveness of the EIA mechanism as a whole. EPD will continue to enforce EP issued to ensure that all the permit conditions are complied with. All persons involved in the construction and operation of a designated project have a duty to observe the

permit conditions. Anyone who fails to do so is liable to prosecution under the EIA Ordinance.

EPD's ROLE

27. The deputations expressed conflicting views on the role that EPD should play in the EIA mechanism. Some were of the view that EPD should be the independent regulator while others thought that EPD should take a more proactive advisory role. Firstly, EPD is responsible for the implementation of the EIA Ordinance and DEP is the authority to approve (with or without conditions) or reject EIA reports, and other applications under the Ordinance. DEP has always exercised his statutory authority independently and impartially. At the same time, without compromising his statutory functions under the EIA Ordinance, EPD will strengthen its advisory role throughout the EIA process to facilitate project proponents to meet the EIA requirements.

ECOLOGICAL CONCERNS

28. As regards the concern about the adequacy of our existing conservation policy and measures, we would like to point out that under our existing nature conservation policy, we seek to protect sites of high ecological value in Hong Kong, and to compensate for areas which should be conserved but are unavoidably lost to essential development projects. To implement the policy, country parks, marine parks, Sites of Special Scientific Interest etc. are designated to conserve natural habitats and highlight their ecological value. With the exception of a few minor works, development projects touching upon these areas are designated projects and are controlled by the EIA Ordinance. We are currently conducting a review of the existing nature conservation policy and mechanisms with the objective of identifying areas for improvement and practicable improvement measures which will enable us to conserve and protect sites of high ecological value more effectively.

29. To facilitate the conduct of EIA on projects that may have ecological impact, the TM sets out guidelines on ecological assessment and the principles for avoidance and mitigation. It is not the intention of the EIA mechanism to deter development projects that have an adverse impact on the ecology or to require the implementation of measures at unreasonably high costs to mitigate the impact. Annex 16 of the TM sets out the guiding principle – “any project that is likely to result in adverse ecological impacts in areas of ecological importance shall not normally be permitted unless the project is *necessary*; it has been proven that no other *practical and reasonable alternatives* are available, and, adequate on-site and/or off-site mitigation measures are to be employed.”

30. To assist designated project proponents to comply with the ecological requirements, AFCD has drafted some detailed guidelines on data collection,

baseline conditions and mitigation measures. Regarding the concern about the “no net loss” principle in habitat size and functions, AFCD advises that as a general rule, habitat compensation should first aim at achieving both the physical size and ecological functions of the habitat lost. The general principle of “no net loss” and “like for like” should be followed as far as possible. However, it would be acceptable to consider a compensation area which is physically smaller than the area lost if a larger area is not available and it can be demonstrated that the compensation area could provide equivalent, if not higher, carrying capacity and ecological functions. Besides, AFCD is also involved in the monitoring of implementation of ecological mitigation measures.

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