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Panel on Environmental Affairs

Meeting on 13 December 2001

**Background brief on
Mechanism of Environmental Impact Assessment**

Background

1. The Environmental Impact Assessment (EIA) Ordinance (Cap. 499) (the Ordinance), enacted in February 1997, provides a statutory framework for the conduct of EIA studies on major development projects having potentially adverse impact on the environment. The detailed assessment methodologies and criteria are set out in the Technical Memorandum (TM) issued under the Ordinance.
2. Under the Ordinance, the Director of Environmental Protection (DEP) is responsible for regulating and enforcing the EIA process. Projects which are considered to be capable of causing significant environmental impacts shall require an environmental permit issued under the Ordinance. The project proponent shall prepare an initial environmental report (IER), based on which DEP will determine the need for a detailed EIA study. DEP will arrange for an IER or EIA to be publicly exhibited at specified locations for a specified period if he satisfies that an environmental permit can be issued in accordance with TM. Upon request, DEP will submit an EIA report to the Advisory Council on the Environment (ACE) at the same time as the report is exhibited for public consultation. Any comments from ACE within the exhibition period will be taken into account by DEP before deciding on the issuing of environmental permit. It will be an offence for a project proponent to carry out a project without permit or not in accordance with the permit conditions.
3. When the Environmental Affairs Panel was briefed on the progress of the drafting of the EIA Bill on 8 November 1995, members expressed concern that the EIA legislation would prolong development time. According to the Administration, the structure of the proposed EIA process had been streamlined and simplified with appropriate time limits imposed on the EPD's action to avoid delay. At the meeting on 6 May 1997, members noted that 20 written submissions had been received during the two-month consultation on the draft TM from February to March 1997.

Considerable amendments had been made to improve the content of the draft TM taking into account the comments and suggestions made. A summary of the key comments and suggestions received and the Administration's response is at the **Appendix**.

Present position

4. Following Government's announcement to speed up public works programme at the start of the current legislative session, members of the Environmental Affairs Panel have expressed concern on how the Administration can ensure the effective operation of the EIA mechanism as development pressures continued to increase.

5. According to the Administration, the EIA mechanism is not meant to impede the development process but to help project proponents to pay due regard to environmental protection requirements at the early stages of project planning and design. To ensure that environmental impacts from major development will be avoided and, where this is not possible, reduced to acceptable levels, the Environmental Protection Department (EPD) will provide professional and technical support service to project proponents on the implementation of the Ordinance. As regards measures to streamline the EIA process, members have noted that the Administration has no intention to amend the Ordinance nor the various prescribed statutory periods for EIA, but efforts are being made to enhance understanding of the EIA mechanism. A review to this effect has been completed and measures, including the formulation of a training programme for relevant government departments, will be put in place. Moreover, project proponents in both the public and the private sectors are welcomed to approach EPD about their plans for major projects before the commencement of the EIA process.

Legislative Council Secretariat

12 December 2001

**CONSULTATION ON THE DRAFT TECHNICAL MEMORANDUM ON
THE ENVIRONMENTAL IMPACT ASSESSMENT PROCESS
UNDER THE ENVIRONMENTAL IMPACT ASSESSMENT ORDINANCE**

FROM FEBRUARY TO MARCH 1997

SUMMARY OF RESPONSES TO MAJOR COMMENTS RECEIVED

Introduction

The Environmental Impact Assessment (EIA) Ordinance was enacted on 29 January 1997. Consultation on the draft Technical Memorandum (TM) of the Ordinance was initiated on 31 January 1997 and was undertaken from February to March 1997. The draft Technical Memorandum was sent to 63 organisations and interested parties.

2. Besides, the Country and Marine Parks Board, Antiquity Advisory Board, and the Industry Technology and Development Council were consulted on the draft TM between February and March 1997. The draft TM was also presented to three major seminars on the EIA Ordinance and the TM.

3. Government departments and branches were also consulted on the amendments made.

4. To facilitate public access to the draft Technical Memorandum, the EIA Ordinance and the draft TM have been made available on the Environmental Protection Department's Homepage (www.info.gov.hk/epd/) on the Internet. The electronic form of the draft TM has attracted about 250 visits as at the end of March 1997.

Major Comments and Suggestions Received and the General Responses

5. About 20 organisations have submitted written comments on the draft TM. A summary of the major views from outside organisations and the responses to comments are set out below.

5.1 Request for More Specific Criteria and Guidelines

Many respondents called for more specific criteria and guidelines for the assessment of different environmental aspects set out in individual annexes including water pollution, waste management impacts, air quality impact, noise impact, ecological impacts, the impacts on fisheries, the impacts on cultural heritage and the impacts of contaminated land.

Response: more specific criteria and guidelines have been developed and included in various annexes of the revised draft TM, based on the experiences in recent EIA studies. These include the criteria and guidelines for the consideration of waste reduction measures, the criteria and guidelines for evaluating water pollution, criteria and guidelines for evaluating noise impact, criteria and guidelines for evaluating the air quality impact, the criteria on the evaluation of the significance of ecological impact, the ecological importance of a site/habitat or a species, the criteria and guidelines on the evaluation of fisheries impact, the guidelines for ecological assessment, the guidelines on the

assessment of the impact on sites of cultural heritage, and the guidelines on the assessment of potential contaminated land issues.

5.2 **Review of Criteria in the TM**

Some respondents requested the Government to keep the criteria in the TM under constant review.

Response: the TM will be under constant review. It has been made known to the LegCo that the actual operation of the EIA Ordinance and the TM will be reviewed after 1 year of operation of the EIA Ordinance.

5.3 **Content of EIA Study Brief**

Some respondents would like to see more specific coverage of study brief to include the description on the geographic boundaries and temporal duration of an assessment. Some others were concerned about the means to resolve dispute on the content of a Study Brief.

Response: amendments have been made under respective annexes to clarify the coverage of the study brief. The EIA study brief may also prescribe the duration and extent of assessment. Regarding dispute resolution, under the main Ordinance, there is a provision for the applicant to appeal to an independent Appeal Board on the content of an EIA Study Brief.

5.4 **The Beneficial Environmental Impacts of Projects**

Some respondents considered that the objectives of EIA report should also include addressing beneficial environmental impacts apart from the adverse environmental impacts arising from a project.

Response: the text of the draft TM has been revised to take account of this point.

5.5 **Assessment of Cumulative Environmental Impact**

Some respondents commented that cumulative environmental impact cannot be well addressed by individual projects, without a good sharing of information, whereas others asked that cumulative environmental impact must be considered.

Response: Assessment of the cumulative environmental impact is required under the TM, in line with the existing EIA practice in the past few years. The EIA study will define the scope of cumulative impact assessment, having regard to the type, nature and location of the project and the issues in question. Under the main EIA Ordinance, the Director of Environmental Protection is required to maintain a public register to make approved EIA reports available to the public. The public register will provide a means for sharing information.

5.6 **Alternative Options of Projects**

Many respondents requested for the consideration of alternative options of projects.

Response: it is now a common practice that the ACE and the LegCo would ask for information on alternatives considered. Amendments have been made in the TM to require an applicant to include information in an EIA report on alternatives considered, including alternative alignment and/or siting.

5.7 **Standard Scientific Terms**

Many respondents agreed that scientific terms should be standardised but a set of definitions need to be set out. However, there is no consensus view on how such definitions should be worked out.

Response: a set of definitions for most important terminologies has been set out in Schedule 1 of the main Ordinance. The approved EIA reports would provide a means whereby the meaning of terms used in EIA but not defined in the main Ordinance can be established. Consideration will be given to issue administrative guidance notes to provide a glossary of terms not defined in the Ordinance.

5.8 **The Guidelines and Criteria for Ecological Assessment**

Some respondents asked for more definitive guidelines on the requirements of ecological assessment study and off-site compensation to be defined in the TM.

Response: the guidelines on the requirements of ecological assessment have been comprehensively revised. Guidelines on off-site compensation have been included and are in line with the recently promulgated policy on off-site ecological compensation.

5.9 **Definition on Material Change**

Some respondents sought clarification on the definition on material change. The views are diverse: some respondents wanted to restrict the application of the term to significant changes, while others would like to see a wider application to those changes that may result in environmental impacts.

Response: the material change referred by this TM has been defined in the Schedule 1 of the EIAO and in the Section 6 of the draft TM. As a matter of principle, material change applies to those significant change that may result in adverse environmental impacts. This point has been clarified in the revised draft TM. The circumstances upon which significant change may occur are described in items (a) to (e) of section 6.1 of the draft TM. All these are based on the actual experiences in Hong Kong and the concerns expressed by members of the public, the LegCo and ACE in the past.

5.10 **Degree of Flexibility in Environmental Permit**

Some respondents would like to see more flexibility in setting Environmental Permit conditions while some others would like to see more restrictive Environmental Permit conditions such as the time of implementation of mitigation measures.

Response: the principles and criteria in setting Environmental Permit conditions are set

out in Section 7 of the draft TM. The Environmental Permit conditions will be formulated on the basis of the findings and recommended measures arising from the approved EIA reports, and the feasibility and practicality of such measures will have to be determined during the course of EIA studies.

5.11 **Conflict Resolution by the Secretary for Planning Environment and Lands (SPEL)**

Some respondents commented that although in giving advice to the Director, the Secretary shall have regard to the purposes of the Ordinance and this TM, there is no guarantee that “any other relevant factors” considered by Secretary are necessarily in line with the purposes of this Ordinance.

Response: it is set out in section 16(3) of the Ordinance that in giving advice pursuant to a technical memorandum, the Secretary shall ensure that the effect of his advice is to protect the environment. The TM has been revised accordingly to reflect this provision in the main Ordinance.

5.12 **Environmental Monitoring and Audit**

Some respondents were concerned about the uncertainty brought into a contract if the criteria in an Environmental Monitoring and Audit Manual have to be reviewed and revised during the Environmental Manual programme.

Response: to address this concern, the TM has been revised to require the Environmental Monitoring and Audit Manual only to be updated as necessary. Experience shows this kind of update would unlikely bring about substantial changes to the criteria in the Manual.

Conclusions

6. The consultation on the draft TM has resulted in useful comments and suggestions. Wherever possible, amendments have been made to the draft TM to accommodate the suggestions and comments. Major improvements have now been included in the revised TM to address various competing concerns and comments.

Environmental Protection Department

April 1997