

## **Comments on the EIA Ordinance**

The Environmental Impact Assessment Ordinance (the “EIAO”) covers a wide range of projects, as listed in Schedule 2 and Schedule 3 of the EIAO. These projects are known as “Designated Projects” under the EIAO. As many of the Designated Projects in turn affect other projects, it is important that the development of these projects should not be unduly delayed.

Schedule 4 of the EIAO contains a list of conditions that the Director may consider including in an Environmental Permit (“EP”). The Director is also empowered to include other conditions in the EP, as he may see fit. The list of conditions that may be imposed is, therefore, very comprehensive and consequently the extensive studies required in the Environmental Impact Assessment (“EIA”) are also very comprehensive.

### **Duplicity of the EIA with the Planning Approval**

Due to the comprehensive nature of the EIA, it effectively embraces a planning study. The EIAO, therefore, creates a system, which is parallel to, but does not replace or correlate with, the planning study. The two systems may or may not interact, and this creates a lot of problems with the implementation of the projects.

The problem is compounded by the fact that the EIA requires very comprehensive and detailed analysis of the future design of the project, as well as the potential nuisance that may be created during construction. To give an example relating to the work of surveyors, if a development exceeds 20 hectares in site area, or a total population of over 100,000, then an EIA will be required.

### **Practicality of the Impact Assessments**

In such cases, the EIA will contain detailed impact assessments of noise, air quality, visual impact, traffic, etc. Such assessments can only be carried out after the detailed layout has been completed. Normally, at an early stage when the EIA is required, such detailed design is not yet completed, as it is unrealistic to carry out detailed design at such a stage, particularly since the market is buoyant, and what is marketable today, may not be marketable in a few years time. Another issue that also causes problems is the phasing arrangement, which could not be determined at such an early stage. However, in order to complete the EIA, the consultants will have to prepare a notional scheme, and a notional phasing programme, for the purpose of carrying out the assessments, with the EPD, the consultants, and the developer knowing full well that the subject matter of the assessment is not the final scheme. Such a requirement is a waste of resources and could substantially delay a project.

### **Delay caused by the EIA**

The EIA causes delay, which increases the financing costs to the developer. If such assessments do serve a practical purpose, they may be worthwhile, but all the impact assessment studies are hypothetical, and have to be carried out again when the design of the project has been finalised.

To make changes to the layout will, in turn, cause another delay, particularly when planning applications are required (for major projects, planning applications are usually required). When processing any change in the layout, the Planning Department and the Town Planning Board both place a lot of importance on the approval given under the EIAO, and any changes proposed may be difficult to acquire approval for, as they may not conform fully with the conditions of the EP. The developers will, therefore, be placed in a very difficult position.

### **The process of the DEP approving Direct Application for an EP or issuance of the Study brief depends on self-assessment of the impact.**

There is no clear guideline if a project profile is considered acceptable for a direct application of an EP. In case the direct application is not accepted, the applicant will have to prepare a full EIA, according to the study brief. There are a number of uncertain elements faced by the applicant, such as the time required for the study, the scale and boundary of the study, which may involve extensive assessments of not only the environmental or engineering impacts, but also the ecological and the archeological impacts. The carrying out of these specialist studies may call upon specialist, recognised parties. The expenses and time required to carry out these studies may fall outside the normal work plan, and the results of which could be difficult to predict. Very often the projects are therefore put in jeopardy.

Many studies call upon computer modeling, with a lot of assumptions, and emphasis on cumulative effects. The significance and severity of the ecological impact, although based on a set of criteria, could still be vulnerable to challenges, as the background data is mostly statistical. Other assessments may also be largely subjective, for example, visual, air quality etc.

### **Timing between the EIA Report and the Actual Construction Work**

For some projects, the date of submitting the EIA could be substantially before the construction work. Although the EIA specifies monitoring measures, the data used in the assessment are often based on a set of assumptions, which are often affected by external factors, which in turn will change with time. In such circumstances, the studies carried out in the EIA may not accurately reflect the real situation, and therefore the accuracy of the EP could be challenged, or some of the conditions may not be applicable.

### **Some practical problems in assessing the Schedule 3 Projects**

The relationship between a phased development and a continuous project needs to be clarified. The methodology of the EIA demands detailed planning of a large development in a single exercise, even if it is phased. This enables the assessment to cover everything at its ultimate state. If such an EIA is required as a prerequisite to a rezoning request, the whole plan will become rigid and inflexible, or incapable of adapting to market changes and design development.

If this is carried out before the rezoning exercise, and well before the land grant process, the applicant has to contribute a lot in order to carry out the study without a firm commitment on the feasibility of the scheme. The initial investment and associated risk would be more than is usual on a project.

The assessment methodology for the Schedule 3 project is not detailed in the TM. It follows those methodologies used by other Schedule 2 items. A detailed design is therefore necessary to provide a meaningful and representative result. Such an assessment would be circulated to various departments, who would then vet the report in detail, with background internal information, which may not be easily accessed by public. The degree of detail is not governed by any guideline.

### **Transfer of the EPD back to PLB**

Many of the duties of the EPD relate to developments and infrastructures. They, therefore, have a closer relationship with planning and development rather than food and hygiene. When the EPD was under the PELB (as it then was), better coordination was achieved at bureau level. The present system requires coordination of two bureaus, which creates complications. The total number of bureaus affecting or controlling property development in Hong Kong is 5, with the number of departments involved being 13. Such a bureaucracy is inefficient and expensive. It is high time the Government reviews such a process, if Hong Kong is to remain competitive.

### **Conclusion**

The concept of carrying out an EIA is a good one, but has created many practical problems, as well as caused delay to many projects. The Government should consider revising the system so as to make it more “user friendly” and to ensure that it is “helping business”.

Hong Kong Institute of Surveyors

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