



嘉道理農場暨植物園公司  
Kadoorie Farm & Botanic Garden Corporation

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By email only

### **KFBG's submission for the Legislative Council Panel Meeting on Environmental Affairs on 27 June 2011**

1. Kadoorie Farm & Botanic Garden (KFBG) recognizes the value that the Environmental Impact Assessment (EIA) process has brought since the Environmental Impact Assessment Ordinance (EIAO) came into operation on 1 April 1998. The EIA process is a useful tool which helps to provide a balance between the need to protect the environment and the need to provide room for development. It can also be an effective mechanism in pursuing options of sustainable development and help to avoid adverse environmental impacts in Hong Kong.
2. The main goal of the EIA mechanism is to encourage the private sector or the project proponent to integrate environmental concerns at the early planning stage of the project. The environmental impact assessment should be based on scientific facts and conducted by experienced professionals. It also provides a channel through which the public can review and comment on the Project Profile (PP) and the EIA itself.
3. The recent Judicial Review<sup>1</sup> for the Hong Kong-Zhuhai-Macau (HKZM) Bridge

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<sup>1</sup> Judgement from The High Court for "Hong Kong-Zhuhai-Macau Bridge" :

[http://www.epd.gov.hk/eia/english/content/files/HCAL\\_9\\_2010.pdf](http://www.epd.gov.hk/eia/english/content/files/HCAL_9_2010.pdf)

indicates that the EIA system is not fulfilling all of its intended goals and should now be reviewed in order to improve it further. The natural environment is facing a major crisis and requires a careful holistic and visionary plan for the future, that incorporates sustainable development along side enhanced protection of our natural ecosystems.

4. KFBG has been actively involved in the EIA review process since 2001, with our team of professional ecologists. We have commented on many PPs and EIA reports and we have identified in this paper several areas where we feel that the process can be improved. This might be considered an appropriate step following the recent extension of the Convention of Biological Diversity to Hong Kong on May 9<sup>th</sup> 2011 ([www.cbd.int](http://www.cbd.int)). Under the convention the territory has an obligation to reduce the direct pressure on, and to improve the status of, the local biodiversity.
5. We hope that comments regarding the EIA mechanism will lead to a more effective and smoother process that will safeguard our precious biodiversity, ecosystem services and human environment. We are looking forward to a more proactive system and strategic/visionary level planning such as a Strategic Environmental Assessment (SEA) that could be implemented in Hong Kong in the near future. Regarding the EIA review mechanism, we have the following specific comments:

#### ***Quality and Accountability***

6. We find that the quality of EIA reports, by and large, have improved over recent years, but the quality of some of the ecological surveys and assessments can be quite variable and we have noted that some recent EIAs have missed important species and skirted over ecological issues. We feel this is likely due to market competition forcing consultants to carry out ecological surveys at the lowest possible cost, and resulting in inadequate time input and possibly the hiring of people without all the necessary expertise and experience to carry out the work. It is also a rather common practice for big consultant firms to hire sub-consultants to carry out some of the ecological surveys and it is not possible from the EIA report to determine who is responsible for conducting the surveys and impact assessments.
7. We would argue that the EIA reports should attain standards similar to scientific publications and should be peer reviewed. We feel that the membership of ACE

does not include an adequate number of qualified ecological experts who are able to appreciate the ecological issues contained within the EIA reports, or identify instances where species or negative impacts have been glossed over or omitted. We advise that an independent 'Ecological Advisory Committee' should also be set up so that there is a formal channel for EPD and ACE to consult outside experts. Unlike ACE, this would be a scientific committee which would provide advice on the adequacy of the ecological EIAs, the significance of the species and habitats affected, and the feasibility of the proposed mitigation measures.

8. A lot of progress has been made since 1998 with additions to our knowledge of the local biodiversity, and there are technological advances which can greatly help in the survey of secretive animals such as the use of infra-red triggered camera traps in recording large mammals and bat detectors to survey bats. We advise The Hong Kong Government to organize a workshop involving relevant departments, academics, green groups and wildlife societies to review and revise the Technical Memorandum so that it can provide much clearer guidance on what groups of wildlife should be surveyed and assessed; the survey intensity, timing and methodology; and, the criteria in assessing impacts. During the early days of the EIA process very few surveys included nocturnal components and some of these are still weak today.
9. To increase the accountability and professionalism of the consultants, and to make the EIA more transparent, the EIA report should clearly list out all the consultants involved, their credentials, exact role and time input with dates and times of surveys provided. EPD should also produce and maintain a register listing the consultants, their professional training, expertise and experience.

#### ***Channel for Public Involvement***

10. The current EIAO provides an open and transparent statutory process, which allows the public to comment on the Project Profiles and EIA reports. This early consultation between stakeholders, public and related departments can facilitate early resolution of potential environmental issues or at least bring them to the surface so that they can be looked into adequately in the EIA. However, after the public has submitted their comments, it is difficult to track whether, and how these are addressed. Based on experience attending ACE-EIA subcommittee meetings, we are concerned that some very important comments expressed in the public

submissions are not picked up on and discussed by ACE. We believe a more transparent consultation process such as public hearings or early dialogue with different concern groups can proactively enhance the public involvement in the EIA review process. We would also like to see EPD open up more channels to engage the stakeholders and public in order to prevent unnecessary controversy at the last moment.

### ***Environmental Permit (EP) and EIA report***

11. The issuance of the EP following completion of the EIA is not always clear. During the Integrated Waste Management Facilities (IWMP) Phase 1- Feasibility Study, the project proponent prepared a single EIA report for two different sites (Tsang Tsui & Shek Kwu Chau). The EIA has now been endorsed with several imposed conditions and recommendations from the Advisory Council on the Environment (ACE) EIA subcommittee, but does it follow that the EP will be granted for both development options in the future? In order to reduce ambiguities, we call for a maximum of one EP to be granted to each designated site in the EIA report.

### ***Time limits in the EIA process***

12. Under the EIAO, the public can comment on the Project Profile (PP) related to the environmental issue within 14 days and the EIA report is available for the public to comment for a period of 30 days. However, most PPs and EIA reports include a number of technical terms and many data. For example, the “Pilot Project for Public- Private Partnership Conservation Scheme, Sha Lo Tung Valley, Tai Po” has more than 1,000 pages of assessment data and description. It is impossible to critically comment on the PP or the whole EIA report within such a tight schedule, especially in the case where members of the public may not have a related technical background. In order to enhance these important consultations and collect more professional advice, we think the Government should extend the statutory time limits for the EIA consultation process to 60 days.

### ***Ecological Mitigation and Environmental Monitoring & Audit (EM&A)***

13. Mitigation proposals and measures should be transparent and a contingency plan should also be included in case the proposed mitigation fails. The design of the mitigation is not only to compensate for the loss of area or impact on the landscape but also needs to provide emphasis on safeguarding the habitat function and integrity. We believe mitigation measures should be implemented before

construction starts in order to minimize the development shock and the residual impacts. Should the adopted actions fail to mitigate the impacts as planned, alternative actions in accordance with the contingency plan should then be taken so that the environmental impacts will fall within that predicted in the EIA. This will likely ensure better planning and implementation of the mitigation measures.

14. Under the current system, the Director of Environmental Protection (DEP) will take advice from the Director of Agriculture, Fisheries and Conservation on nature conservation, ecological assessment, agriculture, animal and plant health and fisheries. We recommend that the Agriculture, Fisheries and Conservation Department (AFCD) and a new “*Ecological Advisory Committee*” as proposed earlier, also be actively involved in the Ecological mitigation and Environmental Monitoring and Audit (EM&A) process. AFCD could act as an internal auditor for the whole mitigation procedure, to ensure the quality and the effectiveness of the actions.
15. Currently the public is not actively involved in the mitigation measure and EM&A. It is hard for the public to monitor the effectiveness of the mitigation actions. We believe that if citizens can act as watchdogs over the mitigation process, project proponents and consultants will take extra care regarding the mitigation component of the project due to public and media pressure.

### ***Sustainability Assessment***

16. We are now facing serious global phenomena: Climate Change, Peak Oil and the depletion of many natural resources. However, the present EIA mechanism only looks into local ecological and environmental impacts without making any reference to the broader regional and global sustainability issues. We think this should be changed and sustainability assessment using carbon emissions and ecological footprint of the proposed project should be carried out. We need to aim for HK as a whole to move toward a net reduction in carbon emissions, to be sustainable even in a post-cheap oil economy and actively enhancing the functions of nature. The sustainability assessment for individual projects should contribute toward that target.

### ***Conflicting Interests***

17. According to Section 4 of the LegCo paper CB (1) 566/01-02(11) “Environmental

Impact Assessment Mechanism”, it stated that about 83% of EIA reports submitted to DEP are for government/public sector projects. The EIA mechanism should ensure professional assessment and judgment and should be seen as fair, unbiased and impartial.

18. Under the current mechanism, EIA consultants are employed by the project proponents have to compete for business and need to maintain a good relationship with the client to enhance their chances of winning repeat business. No doubt they are under pressure to get the project approved and are therefore incentivized to produce reports that are favourable to the client’s position and minimize the real impacts. In this case the system is reliant on independent experts to challenge biased EIA reports in their submissions, however there is a great risk that these submissions are not read or understood. Thus KFBG advise the Hong Kong Government to establish an unbiased system. Consultants should either be independent of the group initiating the project or a conservation fund/trust should be set up with funding from the private sector or government to engage an impartial consultant. This could, for example involve having an authorized list of Environmental Consultants, have the Government select an appropriate consultant for each project and have the project proponent pay the consultant through a central fund. High performance standards for the consultants should be set and these should be evaluated by an independent panel, with poor performers being delisted. This would mean the EPD and ACE get to read unbiased reports with all risks exposed to scrutiny.

***Membership of the Advisory Council on the Environment (ACE) - Environmental Impact Assessment (EIA) Subcommittee***

19. The members of the ACE Environmental Impact Assessment Subcommittee play a key role as they receive and study EIA reports of major development projects and report on the deliberations and findings and make recommendations to the ACE.
20. The current membership of the EIA subcommittee is composed of diversified professionals including geologists, urban planners, civil engineers and others. However, one glaring gap is the absence of an ecologist who has a good grasp of ecological knowledge, and would be able to raise in-depth ecological questions and could provide a more informed judgment on the actual ecological impacts. Many projects, such as “Proposed Residential Development East of Ping Kong, SS, N.T”,



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“The Baroque on Lamma” and “Pilot Project for Public Private Partnership Conservation Scheme, Sha Lo Tung Valley”, are on or near to sites of high ecological value and the Ecological Impact Assessment (EcoIA) is one of the crucial elements in the EIA process. This should be considered seriously in all future ACE EIA subcommittee appointments.

We hope our comments will help to raise further constructive dialogue regarding the EIA process.

Thank you for your attention.

Yours faithfully,

Mr. Andrew Brown  
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Kadoorie Farm and Botanic Garden