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## **WWF's Submission to the Legislative Council Panel on Environmental Affairs Meeting on 27 June 2011**

It is WWF's overall view that, while the Environmental Impact Assessment Ordinance (EIAO) has room for improvement, that there are larger issues that require addressing if Hong Kong is to effectively conserve natural habitats and species, and to ensure sustainable development.

### **I. Sustainable development - a policy framework currently missing to address cumulative and strategic environmental impacts across multiple development projects**

WWF believes that some of the recent debate on whether Hong Kong should favour development or the environment is misconceived. Development and conservation do not exist in isolation. They are both important and contribute to the growth and well-being of a society. Development alone does not guarantee quality of life: without a healthy environment, there may be poor quality of life. Development which pays little or no regard to the impact it has on the natural environment and the resources it consumes is likely to be unsustainable.

WWF works around the world to stop the degradation of our planet's natural environment and to build a future in which humans live in harmony with nature by:

- conserving the world's biological diversity
- ensuring that the use of renewable natural resources is sustainable
- promoting the reduction of pollution and wasteful consumption.

WWF is not anti-development. Rather, WWF calls for **sustainable development**. We want communities around the world to "*meet the needs of the present without compromising the ability of future generations to meet their own needs.*" (UN, 1987,

1)<sup>1</sup> This means ensuring that our generation does not exhaust all available resources; that we limit pollution; and that we do not compromise living conditions and quality of life for future generations.

In the 1999 Policy Address, Chief Executive Tung Chee-hwa announced that *“building Hong Kong into a world-class city and making Hong Kong a clean, comfortable and pleasant home would require a fundamental change of mindset. Every citizen, every business, every Government Department and Bureau needs to start working in partnership to achieve sustainable development.”* In order to achieve this noble goal, the Council for Sustainable Development was established with the following objectives<sup>2</sup>:

- *“finding ways to increase prosperity and improve the quality of life while reducing overall pollution and waste;*
- *meeting our own needs and aspirations without doing damage to the prospects of future generations; and*
- *reducing the environmental burden we put on our neighbours and helping to preserve common resources. (‘1999 Policy Address’)*”

Despite the social clashes that have taken place in the past decade around issues such as using Country Parks for landfill, the absence of comprehensive waste management policies and the launching of large but uncoordinated infrastructure projects for the purpose of economic growth and job creation, we have yet to see a fundamental change of mindset in terms of planning for sustainable development. Many other developed parts of the world have placed their focus on sustainable development to achieve win-wins for the environment and economic development, as well as creating green jobs. However, the Hong Kong Government continues to fixate on large infrastructure construction projects as the main solution for waste disposal, economic development and job creation for Hong Kong.

The environment is a key component in sustainable development and as such it is our view that real solutions for sustainable development in Hong Kong have yet to be explored. This is placing a heavy burden on the existing environmental protection gate-keeping mechanism to fend off projects which may impose large-scale damage to our environment at the expense of future generations. The genuine need for

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<sup>1</sup> (1987). *Our Common Future, Chapter 2: Towards Sustainable Development*. Report of the World Commission on Environment and Development. The United Nations, Geneva of Switzerland, A/42/427 <http://www.un-documents.net/ocf-02.htm>

<sup>2</sup> Link to the Council for Sustainable Development: <http://www.susdev.gov.hk/html/en/sd/index.htm>

infrastructure projects cannot be fully examined without proper sustainable development planning, and environmental impact considerations must be a key component of this. Up to now, such issues have not been satisfactorily addressed.

## **II. The Environmental Impact Assessment Ordinance (“EIAO”)**

Since its establishment in 1998, the EIAO and its relevant implementation mechanisms have been performing an important gate-keeping role. The EIAO is one essential tool to for facilitating long-term, sustainable development of Hong Kong, but cannot be effective in isolation<sup>3</sup>. However, it will continue to allow impacts from developments to accumulate over time in the absence of a **planning policy for sustainable development** in Hong Kong.

WWF has been actively participating in the EIAO process since its implementation in April 1998. Since that date, WWF has reviewed almost all the project profiles and Environmental Impact Assessment (EIA) reports of designated projects which may potentially affect the habitats and species of conservation interests under the EIAO. The EIAO process is one of the most important tools to avoid, minimize and mitigate adverse impacts on the environment from designated projects in Hong Kong.

In terms of decisions relating to the issue of EIA study briefs, the approval of EIA reports, the issue of environmental permits, the imposition of environmental monitoring and audit requirements, and the conflict resolution among relevant authorities, it is stated quite clearly that the EIAO outlines the statutory process while the Director is guided by the Technical Memorandum on the EIA process. This holds true for all decisions<sup>4</sup>. This existing mechanism provides the public with an opportunity to be involved in the early stages of project planning and design. According to the EIAO, the proponent of a project is required to avoid as far as practicable any adverse environmental impact caused by the project<sup>5</sup>. It is WWF’s view that prudent and careful thought is required for any amendment to the EIAO. Sound scientific justifications must be clearly laid out to ensure the environmental protection and gate-keeping functions of the EIAO are strengthened, not weakened.

### **● *The need for a holistic conservation policy***

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<sup>3</sup> See paragraph 12 of the paper CE(1) 566/01-02(11) of the Legislative Council Panel on Environmental Affairs

<sup>4</sup> EPD. A Guide to the EIA Ordinance. <http://www.epd.gov.hk/eia/english/guid/index1.html>

<sup>5</sup> See paragraph 3 of the paper CE(1) 566/01-02(11) of the Legislative Council Panel on Environmental Affairs

Recent incidents, including the Tai Long Sai Wan incident and cases of environmental destruction within priority sites under the New Nature Conservation Policy (for example, Sha Lo Tung and Nam Sang Wai), reflect that the existing nature conservation policy and mechanisms are ineffective. They do not protect and conserve the natural habitats of ecologically sensitive areas including both protected areas (for example country parks) and unprotected areas (such as enclaves). **In light of the absence of a holistic conservation policy, the preservation and protection of ecologically sensitive areas from development projects rely primarily on the existing EIA mechanism.** As such, WWF considers it vital that a clear and comprehensive conservation policy consistent with the Convention on Biological Diversity is formulated. This will minimize uncertainties arising from projects in areas of ecological importance.

- ***Strategic environmental assessment (SEA)***

In order to better address the cumulative impact of multiple development projects and resolve the limitations of project-based EIAs, WWF requests that the Hong Kong Government formally and proactively develop a policy, institutional mechanism, implementation procedure and monitoring plan for Strategic Environmental Assessment (SEA) in Hong Kong. Our view is that there is an urgent need to adopt the ecosystem approach set out in the Convention of Biological Diversity, and to ensure that, for the sake of safeguarding our environment, the footprint of individual projects is assessed in the context of the broader environment. We feel that SEA is an essential tool that will minimise the overall environmental impacts and ensure the sustainability of developments.

When an effective SEA is in place, the project proponents of nearby and concurrent projects should follow a coordinated approach and integrate the planning, design and management of mitigation areas under different works projects. Such an integrated approach would certainly enhance mitigation works, make them more effective and achieve a greater conservation value for the mitigation habitats.

- ***Enhancing the public consultation process***

Section 6 of the LegCo paper (CB(1) 2193/10-11(06) "Review of Environmental Impact Assessment Mechanism", states that "*When considering whether to approve an EIA report, EPD will consider whether relevant environmental issues raised by the*

public and the ACE have been addressed'. Under the current mechanism, members of the public are invited to comment on every Project Profile and EIA report during the public inspection period. The EPD is responsible for taking the public's comments into consideration for the preparation of the study brief and the approval of EIA reports<sup>6</sup>. However, both during and after the public inspection period, the EPD does not publicise what the comments are, whether they will be addressed, or explain any reasons for its decisions. They simply release the number of public comments received after the EIA report is approved.

Since the EPD is responsible for the implementation of the EIAO, WWF is of the view that the EPD should be responsible for summarising and presenting any environmental issues and concerns raised by the public to the members of the ACE EIA subcommittee. This will enhance the public's monitoring role in reviewing EIA reports.

Continued public involvement before and during the commencement of this statutory process is a concept idealised in the EIAO. This should be enhanced to reduce conflicts between the public and project proponents, and improve the communication and coordination among the stakeholders involved. Moreover, other mechanisms that will increase public involvement should be explored for the EIAO process. One example would be holding public hearings on major developments.

- **Issues on conflicts of interest**

Whilst being the administrator and the approval authority in the EIA process, the EPD is also the project proponent on certain designated projects. A recent example is the proposal to construct an incinerator at Shek Kwu Chau - an area with waters of high ecological value. The role of the EPD is in some cases ambiguous and WWF thinks it is crucial to ensure that the professional judgment of EIA approval is not influenced by potential conflicts of interest.

- ***Mitigation measures lagging behind***

There have been some significant recent development projects where the implementation of key mitigation measures have been proposed well after the period of greatest disturbance to the environment. These include compensation for habitat

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<sup>6</sup> See paragraph 12 of the paper CB(1) 918/01-02(07) of the Legislative Council Panel on Environmental Affairs

loss in the form of new Marine Parks for the Hong Kong-Zhuhai-Macao Bridge and the Integrated Waste Management Facilities. WWF has previously voiced its concerns in cases where mitigation lags behind environmental impact and urges for far more emphasis on mitigation measures being timed to offset intensive peak periods of disturbance. In addition, since mitigation measures are only implemented after the completion of works, it is difficult for the public to monitor whether they fully address a project's environmental impact and furthermore, and ineffective for the EPD to ensure that the conditions stated in the Environmental Permit (EP) are fully complied with. WWF is of the firm belief that full compliance with permit conditions is essential to ensure the effectiveness of the EIA mechanism as a whole.

- ***Improvements to Technical Memorandum (TM) for the EIA Process***

WWF opines that two criteria listed in the Technical Memorandum (TM) for evaluating fisheries impact (Annex 9) are fundamental flawed, as follows:

- Size of affected area: The area of fisheries habitats, fishing grounds or aquaculture sites affected constitutes a high proportion of the total area of fisheries habitats, fishing grounds or aquaculture sites in Hong Kong.
- Loss of fisheries resources / production: The loss of fisheries resources / production (including capture fisheries and aquaculture production) constitutes a high proportion of total fisheries resources / production in Hong Kong.

When assessing the impacts to fisheries resources, the project proponents always compared the affected area with the total fishing waters in Hong Kong (165,000 ha), and concluded that the loss is relatively small. WWF considers that this assessing method is irrelevant and misleading. The percentage of habitat loss should be calculated based on the water areas of the project belonged to (e.g. western waters), but not the entire sea area in evaluating the impact. If such a misleading method is used, the size of the affected area of development projects can hardly be evaluated as "high". For example, in the South Brothers EIA, a total of 1650 ha seabed loss was identified from the concurrent projects and in the vicinity of the South Brothers mud pit facility. The project proponent indicated that the impact was small and not significant as it only contributed to 1% of the total Hong Kong waters.

Marine animals have specific areas where they live, reproduce, feed etc. Coastal areas are of particular importance to a large number of species because they use these areas for these activities. To indicate the loss due to works which occurs in

coastal areas is small compared to the overall sea area in Hong Kong is not instructive and is misleading.

We recommend that the following guidelines are incorporated and/or adopted in the Technical Memorandum for the EIA Process with regards to mitigation:

- a. Clear guidelines for evaluation of the appropriateness and effectiveness of the proposed ecological mitigation measures should be formulated, so that the risk of failure of the proposed mitigation measures is minimised.
- b. Mitigation proposals should have clear and quantifiable objectives for management performance criteria, and in the case of compensation for ecologically-valuable habitats, the objectives should adhere to the goal of “no net loss” in habitat size AND function.
- c. Sufficient information on the function of the habitat (from a comprehensive literature review and detailed assessment) should be provided in the EIA, and demonstration of the feasibility of the proposed ecological mitigation measures should be required.