



Review of Environmental Impact Assessment Mechanism

Law Society Comments

Whatever the merits of the judgment in the case of Chu Yee Wah v Director of Environmental Protection [2011] 3 HKC 227, the case reveals a possible flaw in Environmental Impact Assessment (“EIA”) practice, namely, that EIAs for Designated Projects may not have included a quantitative stand alone analysis of the projected environmental conditions without the project.

This analysis establishes the baseline environmental conditions of the site without the project in place and sets a benchmark for measuring the environmental footprint of the project and the mitigation measures needed to limit adverse environmental impacts.

It appears that only cumulative environmental impacts (conditions with the projects in place) may have been presented in the EIA reports on projects. In our view, it is insufficient that the EIA reports just modelled and evaluated the baseline conditions, they also should be presented in the EIA reports.

The purpose of the Environmental Impact Assessment Ordinance (“EIAO”) is “to provide for assessing the impact on the environment of certain projects and proposals, for protecting the environment and incidental matters”. A balance also needs to be struck between the public interest in protecting the environment and the public interest in ensuring a major designated project is implemented in a timely and efficient manner (*KCRC v Director of Environmental Protection* [2000] *EIA Appeal Board Appeal*).

One means by which the EIAO seeks to achieve its purpose of protecting the environment is by assessing the extent to which a project would have an environmental impact. That adverse impact is the change in the environment from the position that would prevail if the projects were not implemented. The EIAO adopted a scheme whereby any change which had an environmental impact was to be

identified and measured and then an assessment made as to whether that change was adverse so that measures for mitigation should, if possible, be drawn up.

Our view is that the practice under the EIAO should incorporate for the control of pollution, both the approach of imposing limits on the quantities of polluting matter which a given activity might emit and the approach of providing a framework for specific directives imposing quantitative limits on the extent to which the environment might be polluted. The EIAO should not be interpreted as if the only relevant yardstick is whether particular benchmarks were exceeded. If environmental protection is to be meaningful, it has to aim to minimise the environmental impact of any project and, in the case of air quality, by minimising the amount of pollutants released into the atmosphere. The nature of environmental impacts of a project is those changes in environmental parameters (including air quality) in space and time, compared with what would have happened had the project not been undertaken.

We support a purposive interpretation of the EIAO which sees it as incorporating the two approaches described above rather than interpreting on the basis that the only relevant yardstick is whether particular benchmarks are exceeded. The two approaches reflect international best interpretation practice for EIAs.

We recommend that EPD improves its practice to ensure that the baseline environmental conditions should be presented in an EIA report and assessed against the project environmental footprint. However, if there is doubt as to whether baseline conditions should be presented in an EIA report, we recommend that the EIAO be amended, in order to ensure Hong Kong conforms with the best international EIA practice.

**The Law Society of Hong Kong
Land Use Planning and Environmental Law Committee**

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