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Panel on Environmental Affairs

Meeting on 23 May 2011

**Update background brief on the
environmental impact assessment mechanism
(Position as at 18 May 2011)**

Purpose

This paper sets out the background to the environment impact assessment (EIA) mechanism, and gives a brief account of the discussions at meetings of the Council and the Panel on Environmental Affairs (the Panel).

Environmental impact assessment mechanism

2. The Environmental Impact Assessment 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 EIA mechanism plays a significant role in balancing the need to protect the environment and development needs. It aims to encourage project proponent to integrate environmental concerns into the planning process. Not all projects are subject to controls under the Ordinance. Only those that are likely to have a significant impact on the environment are classified as designated projects and subject to control under the Ordinance. For example, only those residential developments that are located in ecologically sensitive areas and those with more than 2 000 flats in unsewered areas are designated projects. The detailed assessment methodologies and criteria are set out in the Technical Memorandum (TM) issued under the Ordinance.

3. Under the Ordinance, the Director of Environmental Protection (DEP) is responsible for regulating and enforcing the EIA process. Proponent of a designated project is required to obtain an environmental permit from DEP before commencement of the project. For designated projects which will

cause limited impacts on the environment, the proponents can apply to DEP direct for an environmental permit. Proponents of other designated projects are required to provide a description of the project profile, based on which DEP will draw up an EIA study brief. DEP will arrange for the project profile to be exhibited for comments by the public and the Advisory Council on the Environment (ACE) at the same time. DEP will take into account the comments on the project brief when drawing up the study brief which set out the issues that the project proponent is required to address in the EIA report. The project proponent will prepare an EIA report in accordance with the study brief and the related TM issued under the Ordinance. Once DEP is satisfied that an EIA report meets the requirements set out in the study brief and TM, the report will be exhibited for public inspection. DEP will take into account the comments on the EIA report in making a decision on whether or not to approve the EIA report. Statutory time limits are set for each step of the EIA process, including the maximum time within which DEP shall make a decision on an EIA report, such that the EIA process would be completed within a reasonable time

Improving the operation of the EIA mechanism

4. The rejection of the Sheung Shui to Lok Ma Chau Spur Line Viaduct Version EIA report by DEP had aroused much concern on the operation of the EIA mechanism, the coordination within the Administration, and the impact of EIA on development projects. In the light of the determination of the Spur Line Appeal Case, the Administration had implemented a number of measures to improve the operation of the EIA mechanism.

Measures to facilitate compliance with the Ordinance

5. In addition to the guidance materials and seminars/talks for, as well as Environmental Study Management Group meetings with project proponents, the Environmental Protection Department (EPD) will particularize in the EIA study brief the concerns and matters that require to be studied, and will be as specific as possible when seeking further information from project proponents. It will also encourage project proponents to start informal dialogues with EPD and other authorities under the Ordinance, ACE and/or its EIA Subcommittee at the early planning stage (even before the statutory EIA process begins) to exchange views on environmental issues that are likely to arise from the proposed projects.

Measures to improve inter-departmental coordination in the EIA process

6. Without compromising its statutory functions under the Ordinance, EPD will provide advice to works departments/agencies in a proactive manner with a

view to helping them to identify potential environmental impacts, and work out effective mitigation measures to avoid, or if it is not possible, to mitigate the impacts to acceptable level at an early stage. To avoid deadlocks at the working level, EPD and works departments/agencies staff are required to escalate issues that could not be satisfactorily resolved to their senior management at the earliest possible stage. In addition, EPD will organize training sessions, seminars, and liaison meetings to familiarize works departments/agencies with the EIA procedures and requirements, and to share experience.

Consideration of alternatives during the EIA process

7. There are provisions in TM requiring assessment of alternative alignment, siting, layouts, programmes, construction methods, land use and design for designated projects which are likely to result in adverse environmental impacts. The need for consideration of alternatives is now specified in the study brief such that the public and ACE can comment on these alternative proposals during the public inspection period stipulated under the Ordinance. DEP will consider these comments when making a decision on whether or not to approve the EIA report.

Deliberations at meetings of the Council and the Panel

8. Hon WONG Yung-kan raised question on the monitoring of the performance of consultants commissioned to conduct EIA studies at the Council meeting on 20 December 2000. The question and the Administration's response are hyperlinked below for ease of reference.

9. The EIA mechanism was discussed at the Panel meetings on 13 December 2001 and 28 January 2002. Deputations, including academia and professional bodies, were invited to express their views at both meetings. The Administration's response to deputations' concerns is set out in LC Paper No. CB(1) 918/01-02(07) which is hyperlinked below for ease of reference.

10. At the Panel meetings in December 2001 and January 2002, some Panel members pointed out that environmental concern was only part of the many aspects of a designated project. They also questioned the conflicting roles of EPD as the administrator and umpire in the EIA process, adding that early communication between the works departments/agencies and EPD might not be useful in resolving conflicts as the ultimate authority for the issuance of environmental permits still rested with DEP. Other members however opined that sustainable development should not be compromised for the sake of expediting public works projects to create job opportunities.

Latest development

11. In the light of recent determination of Judicial Review Case of the Hong Kong-Zhuhai-Macau Bridge, the Panel has invited the Administration to brief members on the need to review the existing EIA mechanism.

Relevant papers

Question raised by Hon WONG Yung-kan at the Council meeting on 20 December 2000

http://www.legco.gov.hk/yr00-01/english/counmtg/agenda/cmtg2012.htm#q_5

Question raised by Hon WONG Yung-kan and reply given by the Administration at the Council meeting on 20 December 2000

<http://www.legco.gov.hk/yr00-01/english/counmtg/hansard/001220fe.pdf>

Information paper provided by the Administration for the Environmental Affairs Panel meeting on 13 December 2001

<http://www.legco.gov.hk/yr01-02/english/panels/ea/papers/ea1213cb1-566-11e.pdf>

Minutes of the Environmental Affairs Panel meeting on 13 December 2001

<http://www.legco.gov.hk/yr01-02/english/panels/ea/minutes/ea011213.pdf>

Information paper provided by the Administration for the Environmental Affairs Panel meeting on 28 January 2002

<http://www.legco.gov.hk/yr01-02/english/panels/ea/papers/ea0128cb1-918-7-e.pdf>

Minutes of the Environmental Affairs Panel meeting on 28 January 2002

<http://www.legco.gov.hk/yr01-02/english/panels/ea/minutes/ea020128.pdf>

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