

立法會
Legislative Council

LC Paper No. CB(1) 2548/10-11(11)

Ref. : CB1/PL/EA

Panel on Environmental Affairs

Meeting on 27 June 2011

**Updated background brief on the
environmental impact assessment mechanism
(Position as at 24 June 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) (EIAO), which came into operation on 1 April 1998, 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 EIAO. Only those that are likely to have a significant impact on the environment are classified as designated projects and subject to control under EIAO. 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 EIAO.

3. Under EIAO, 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 EIAO. 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 the following measures to improve the operation of the EIA mechanism.

Measures to facilitate compliance with EIAO

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 EIAO, 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 EIAO, 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, sitting, 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 EIAO. DEP will consider these comments when making a decision on whether or not to approve the EIA report.

A recent judicial review case

8. On January 2010, a citizen filed a judicial review on the air quality assessment of Hong Kong section of Hong Kong-Zhuhai-Macao Bridge project. On 18 April 2011, the Court of First Instance handed down a judgment which rejected six of the seven issues contended by the applicant. However, after considering the purpose of EIAO, the Court ruled that apart from assessing the cumulative environmental impacts caused by designated projects, the EIA report should include a "stand alone" analysis of the project and put forward relevant mitigation measures, so as to allow the authority to consider whether the relevant impacts have been kept to the minimum. As the judgment involves crucial legal viewpoints and has significant impact on the principles for executing EIAO in Hong Kong, EPD (after seeking legal advice) has lodged an appeal against the judgment.

Deliberations by the Panel

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

10. The Panel further discussed the matter at the meeting on 23 May 2011 after the Court of First Instance handed down a judgment on the judicial review on the air quality assessment of Hong Kong section of Hong Kong-Zhuhai-Macao project. The Panel had carefully considered the propriety

of discussing the review of the EIA mechanism while an appeal by the Administration on the case was underway. The Panel decided that there was no question of subjudice so long as members did not touch on the judicial review case. In the course of deliberation, some Panel members pointed out that environmental concern was only part of the many aspects of a designated project. Other members were concerned about the conflicting roles of EPD as both the administrator and umpire in the EIA process. The Administration was urged to consider appointing an independent panel to execute the EIA process.

Questions raised at Council meetings

11. Hon WONG Yung-kan raised a question on the monitoring of the performance of consultants commissioned to conduct EIA studies at the Council meeting on 20 December 2000.

12. Following the ruling of the Court of First Instance on the judicial review on the air quality assessment of Hong Kong section of Hong Kong-Zhuhai-Macao project, Hon Abraham SHEK raised a question at the Council meeting on 18 May 2011 enquiring, inter alia, the criteria adopted by the authorities for deciding whether or not a baseline survey on a project would be conducted, the number of projects on which baseline surveys had not been conducted during the EIA process, and the number of projects where EIA reports had been withdrawn due to non-compliance with statutory requirement, and whether the Administration would review the existing EIA process to ensure that further projects would not be delayed in the event of non-compliance. Hon LAM Tai-fai also raised a question on the judicial review case at the Council meeting on 8 June 2011.

13. The questions and the Administration's responses are hyperlinked below for ease of reference.

Latest development

14. To gauge public views on the existing EIA mechanism, the Panel has decided to invite deputations, including green groups, professionals, and stakeholders, to attend the meeting on 27 June 2011.

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>

Question raised by Hon Abraham SHEK at the Council meeting on 18 May 2011

http://www.legco.gov.hk/yr10-11/english/counmtg/agenda/cm20110518.htm#q_20

Administration reply to question raised by Hon Abraham SHEK at the Council meeting on 18 May 2011

<http://www.info.gov.hk/gia/general/201105/18/P201105180180.htm>

Information paper provided by the Administration for the Environmental Affairs Panel meeting on 23 May 2011

<http://www.legco.gov.hk/yr10-11/english/panels/ea/papers/ea0523cb1-2193-6-e.pdf>

Question raised by Dr Hon LAM Tai-fai at the Council meeting on 8 June 2011

http://www.legco.gov.hk/yr10-11/english/counmtg/agenda/cm20110608.htm#q_6

Administration reply to question raised by Dr Hon LAM Tai-fai at the Council meeting on 8 June 2011

<http://www.info.gov.hk/gia/general/201106/08/P201106080155.htm>

Council Business Division 1
Legislative Council Secretariat
24 June 2011