

ADVISORY COUNCIL ON THE ENVIRONMENT
(18.4.94)

(ACE 20/94)
(For advice)

New Legislation for Environmental Impact Assessment

Purpose

We seek members' advice for a proposal to introduce a statutory framework for the conduct of Environmental Impact Assessment (EIA) Studies.

Background

2. Over the last decade EIA in Hong Kong has developed from an ad hoc requirement imposed on a small number of Government and private infrastructure projects, to a set of systematic administrative procedures followed by proponents of all major or environmentally significant development projects (private and public) in Hong Kong. These procedures are laid down in two documents:

- (a) the joint Planning, Environment and Lands Branch Technical Circular No. 2/92 and Works Branch Technical Circular No. 14/92, entitled 'Environmental Impact Assessment of Major Development Projects', for Government projects; and,
- (b) Advice Note 2/92, entitled 'Application of the Environmental Impact Assessment Process to Major Private Sector Projects', issued by the Environmental Protection Department (EPD).

3. Under these procedures, the proponent of a project with potentially significant impacts is expected to:

- (a) notify EPD of the proposal and provide all necessary information for the initial screening assessment (currently called an Environmental Review) by EPD; and
- (b) be responsible for undertaking any EIA study required by EPD (usually by employing a specialist consultant) and implementing the measures recommended as a result of the study.

4. Under the current system, EPD's role is to carry out the environment review, decide whether an EIA study is required and what matters it will address, monitor the quality of the work undertaken during the study, form a view on the technical adequacy of the work done in the study and the environmental acceptability of its findings and recommendations.

Reasons for the Legislative Proposal

5. There is currently no legal requirement for proponents to comply with these procedures. Proponents may choose to comply because their projects are subject to some form of approval, permission or consideration by Government for which environmental factors are considered or EPD's advice is sought. Examples include planning permission and lease modification for private sector projects, and endorsement of public sector proposals at progress and policy committees of Government.

6. Proponents generally comply with requirements for notification of proposals and for undertaking EIA studies. However, there has been considerable difficulty in getting proponents to fully implement the measures recommended in the EIA studies. Often this has resulted from the proponent's failure to anticipate or allow for the cost and programming implications of the study findings at the planning stage. It is necessary to depend on the good will of the proponent or the appropriate land management and planning authorities for the implementation of study recommendations.

Proposed Scheme

7. It is proposed that the current procedures be formalized under statute to provide for the following :

- (a) The Director of Environmental Protection (DEP) should be responsible for regulating and enforcing the EIA process;
- (b) All Designated Projects (DPs), which are those projects considered to be capable of causing significant environmental impacts and which shall be prescribed under the Ordinance, shall require an environmental permit (the permit) issued under the Ordinance. These DPs will principally comprise those project types which are required to undergo EIA procedures under the current administrative arrangements;

- (c) DEP would also be provided the authority to require other projects to obtain an environmental permit by serving a notice on the proponent, if he considers that they could cause significant impacts. DEP would only need to exercise this discretion rarely for very unusual types of environmentally significant projects which are not envisaged in drafting the list of designated projects;
- (d) The project proponent shall prepare an initial environmental report (IER) based on which DEP will determine the project's environmental acceptability and the need for a detailed EIA study;
- (e) For projects required to conduct detailed EIA study, DEP will review the EIA reports to determine the requirements for the project's acceptable environmental performance. These requirements will be given effect as enforceable conditions in the permits;
- (f) Where an IER or an EIA satisfies DEP that an environmental permit could be issued, DEP would arrange for the report to be publicly exhibited at specified locations for a specified period, and take into account any comments received before issuing the permit;
- (g) Technical memoranda will be issued to make known to project proponents the structure and content of the IER or EIA, and to guide DEP in issuing the permit;
- (h) Upon receipt of the IER or EIA, EPD will be required to inform the proponent within a specified period of whether a permit can be granted. It is not, however, possible to place a time limit on the duration of an EIA, because the time taken to produce an acceptable EIA report is essentially in the hands of the proponent, and a statutory limit would compromise the quality and usefulness of the study;
- (i) To carry out a Designated Project without permit or not in accordance with the permit conditions will constitute an offence. A strong deterrent in the form of stiff penalties shall be provided under the Ordinance. Initial plans are to stipulate that any offence under the Ordinance is liable to fines of \$5 million maximum, and a commensurate custodial sentence. Where an offence results in damages to the environment, DEP shall be able to claim costs for any remedies he carries out to restore or salvage the situation; and,

- (j) Appropriate appeals and evidentiary provisions shall be stipulated.

8. To facilitate decision making and not to hold up the planning process for the DPs, it is also proposed to establish some common elements in the new EIA Legislation and the new Town Planning Ordinance currently being drafted. There will be two points of commonality. Firstly, those developments which, under the proposed Planning Ordinance, will require an environmental assessment for planning permissions, will be included in the list of DPs under the EIA Ordinance. Secondly, the requirements under the two ordinances will be such that the environmental assessment that will accompany the planning application will essentially be the same as the IER under the EIA Ordinance. This will enable the Town Planning Board to have the same information as EPD at an early stage, and EPD's comments on environmental acceptability and EIA requirements will be given to the Board to assist it in making the planning decision.

9. Two flow charts that outline the EIA process under the existing system and the proposed EIA Ordinance respectively are attached for Members' reference. The two-stage EIA process under the proposed Ordinance enables an earlier decision to be taken on a project's environmental acceptability, promotes an early focus of environmental factors in project planning and design, pre-empts conflicts with the pollution control authority and public opposition in the later stage of a project, and provides for a mechanism to follow through the recommendations arising from IER or EIA. The time taken in following the procedures is much more clearly defined than what is now the case under the current administrative system.

The Next Step

10. Public consultations with concerned bodies will take place after ACE is consulted. Members advice will be sought again later when a draft Bill is available.

Advice Sought

11. Members' advice and comments on the scheme as outlined in paragraphs 7 and 8 are sought.

Environmental Protection Department
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