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for information

Guidelines for Implementing the Policy on Off-site Ecological Mitigation Measures

At the ACE meeting on 28 October 1996, the Administration agreed to provide a copy of the Guidelines for Implementing the Policy on Off-site Mitigation Measures to members when ready. The said Guidelines are attached for members' information.

Guidelines for Implementing the Policy on Off-site Ecological Mitigation Measures

Introduction

The Government's policy on off-site ecological mitigation measures is that where such a measure is required, it would be provided to the extent that it is practicable, on a 'like for like' basis and within the boundaries of Hong Kong. The purpose of this circular is to set out guidelines for the implementation of the policy.

2. This circular should be read in conjunction with PELB Technical Circular 2/92, 'Environmental Impact Assessment of Major Development Projects' and DEP Advice Note 2/92, 'Application of the Environmental Impact Assessment Process to Major Private Sector Projects' (Copies available at the Council Secretariat).

Background

3. Government's current guidelines on the application of the environmental impact assessment process to public and private sector projects are unclear in respect of off-site mitigation measures for projects having potential adverse ecological impacts. This circular aims to clarify the issue by providing a set of guidelines on how the policy on off-site ecological mitigation measures should be implemented.

4. The policy is that:

- (a) areas of ecological importance should be conserved as far as possible. Any project that is likely to result in adverse ecological impacts in areas of ecological importance should not normally be permitted unless the project is necessary; it has been proven that no other practical and reasonable alternatives are available, and, adequate on-site and/or off-site mitigation measures are to be employed;
- (b) both on-site and off-site mitigation measures should be considered an integral part of the EIA process;
- (c) a project proponent is required to mitigate any adverse environmental impacts arising from his project and to implement the necessary on-site and off-site measures to limit the impacts to within established criteria. Off-site mitigation measures should only be considered, however, when the potential for providing adequate on site measures has been exhausted;
- (d) any off-site measures should be determined during the EIA study and should be approved by the Secretary for Planning, Environment and Lands in accordance with the guidelines laid down in this circular. Where any aspects of the off-site mitigation measures are the cause of irreconcilable differences between the project proponent and the Secretary for Planning, Environment and Lands, the issue shall be

referred for resolution to the Lands, Works, Transport, Housing and Environment Protection Policy Group of the Chief Secretary's Committee; and

- (e) where proposals for off-site measures are approved by the Secretary for Planning, Environment and Lands the project proponent should be responsible for funding such measures and for ensuring their proper implementation.

EIA Study Brief

5. To implement the policy on off-site ecological mitigation measures, the EIA study brief for projects that have potential for adverse ecological impacts should include the following key tasks, among other tasks to address other environmental impacts:

- (a) the physical environment should be described and the habitats characterised based on the best available information;
- (b) the existing flora and fauna likely to be affected should be investigated using the best available information together with any surveys that are necessary to fill in key information gaps, including information on the type, importance, composition/community structure, abundance, size, seasonality of the habitats and species, and their inter-dependence;
- (c) the direct/indirect and off-site/on-site ecological impacts of the Project should be identified, quantified wherever practicable, and evaluated against the criteria laid down in Annex A. Such impacts may include destruction, displacement or adverse effects on flora and fauna such as loss of breeding grounds, loss of wetland*, loss of fisheries, species extraction, or loss of ecological carrying capacity;
- (d) all possible design measures and all practicable on-site mitigation measures should be investigated and determined to avoid and minimise the adverse ecological impacts;
- (e) the residual ecological impact (after the successful implementation of the proposed on-site ecological mitigation measures) should be determined and quantified. The importance of such impacts and the severity should be evaluated against the criteria laid down in Annex A. The necessity to mitigate such residual ecological impacts should be determined and confirmed;
- (f) if it is considered necessary to mitigate the residual ecological impacts, off-site ecological mitigation measures should be identified and defined, and their feasibility and practicality including land availability should be determined. Any side-effects of the proposed off-site mitigation measures should be assessed and evaluated. The scope, type, location

and the implementation arrangement for the off-site ecological mitigation measures should be defined; and

- (g) if off-site ecological mitigation measures are proposed, the broad order of cost of such measures (both capital and recurrent) should be estimated, and the maintenance requirements and any necessary monitoring and audit requirements should be defined.

Guidelines on Off-site Ecological Mitigation Measures

6. Where off-site ecological mitigation measures are involved, they should be considered along with other alternatives e.g. change of site, layout, etc., including modifying or abandoning the project. A flow-chart showing the procedure on assessing the need for off-site ecological mitigation measures is at Annex B.

7. For off-site ecological mitigation measures, the Planning, Environment and Lands Branch shall approve the need for and the type and scope of the off-site ecological mitigation measures to be adopted for a particular project according to the following guidelines:

- (a) all possible design measures and all practicable on-site ecological mitigation measures should be fully investigated in the EIA study and exhausted to minimise the loss or the damage caused by the project to the ecological habitats or species;
- (b) with the on-site ecological mitigation measures in place, the residual impacts on ecological habitats or species should be defined, quantified and evaluated according to the criteria laid down in Annex A. Before off-site ecological mitigation measures are to be adopted, the EIA study needs to confirm that it is necessary to mitigate the residual ecological impacts based on ecological considerations set out in Annex A, and that such residual losses arise from the Project in question;
- (c) if the residual ecological impacts require mitigation and all practicable on-site ecological mitigation measures have been exhausted, off-site ecological mitigation measures should be provided;
- (d) the off-site mitigation measures should be on a "like for like" basis, to the extent that this is practicable. That is to say, any compensatory measures to be adopted for mitigating the residual ecological impacts must be directly related to the habitats or species to be protected. Either the same kind of habitats or species of the same size should be compensated, or the consultants and the project proponent should demonstrate that the same kind of ecological function and capacity can be achieved through the measures to compensate for the residual ecological impacts. For example, the loss of a natural woodland should be compensated by the replanting of native trees to form a woodland of a similar size where possible;

- (e) the off-site ecological mitigation measures should only be implemented within the boundaries of Hong Kong, and must be technically feasible and practicable;
- (f) the extent of such off-site mitigation measures should be limited to what is necessary to mitigate the residual ecological impacts arising from the Project; and
- (g) any proposed off-site mitigation measures should not require further EIA for their implementation. Their feasibility, constraints, reliability, design and method of construction, time scale, monitoring, management and maintenance should be confirmed during the EIA study.

Funding Arrangement and Implementation of Off-site Ecological Mitigation Measures

8. In the course of the EIA study, the following should be determined:

- (a) the type, location and scope of the off-site ecological mitigation measures that are necessary, feasible and practicable; and
- (b) the broad order of the cost (both capital and recurrent) of any off-site ecological mitigation measures, including operational and maintenance requirements and any environmental monitoring and audit requirements during and after the construction.

9. The project proponent shall be responsible for funding the necessary off-site ecological mitigation measures and for their proper implementation. In the case of public sector projects, all funding proposals will be subject to the normal Resources Allocation Exercise procedures and the project proponent shall also be responsible for any cross-branch and inter-disciplinary co-ordination of the implementation aspects of the project.

10. The on-site and off-site mitigation measures shall be generally implemented in conjunction with the works project. They shall be completed (excluding establishment period) within 12 months of completion of the works project or as specified by the Secretary for Planning, Environment and Lands in the approval for the off-site mitigation measures. However, in exceptional cases it may be necessary for some mitigation measures to be completed before start of or after the completion of the works project. For example an endangered species may have to be established in a new habitat before the existing habitat may be destroyed to construct the works project.

Application to Public Corporations and Private Sector

11. The above guidelines shall apply to projects initiated by public corporations as well as the private sector. The EIA study should determine the need for and the type and scope of off-site ecological mitigation measures. Liaison with the Government should be made

by the public corporations or the private sector to confirm the availability of land for such measures and the arrangement for the implementation of the off-site mitigation measures. The agent for implementing the proposed off-site ecological measures should be clearly stated in the EIA report. Where appropriate, similar arrangement to resolve irreconcilable differences amongst government departments would be made for projects proposed by public corporations and private developers.

* The Convention on Wetlands of International Importance (Ramsar Convention) defines wetlands as 'areas of marsh, fen, peat land or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish, or salt, including areas of marine water the depth of which at low tides does not exceed six meters.' Under this definition, a wide range of habitats from shores, estuaries to inland water bodies, such as marshes, swamps, peat lands, bogs, ponds, rivers and lakes are included. The most important wetland habitats in HK are found in the N&NWNT, especially around Inner Deep Bay.
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