



The Statutory Process under the  
Environmental Ordinance

## **...to avoid, minimize and control adverse impacts on the environment by designated projects...**

### **Structure of the Ordinance**

To achieve the Ordinance's objective "to provide for assessing the impact on the environment of certain projects and proposals, for protecting the environment and for incidental matters", the following fundamental features were built into the statutory framework of the EIA Process.

- \* A list of designated projects covering both public and private sector works that requires an environmental permit.

- \* An environmental impact assessment process with statutory time limits and provision for formal public consultation.

- \* An environmental permit system, which provides an effective enforcement mechanism.

- \* A Register containing all information and documents produced under the EIA process for public inspection.

- \* A Technical Memorandum to cover the principles, procedures, guidelines, requirements and criteria for the various steps in the EIA process.

- \* A clear list of penalties for offences relating to environmental permits and interference with enforcement of the legislation.

- \* Enforcement power granted for investigation of possible offences and to impose cessation order where warranted.

- \* An independent appeal board to settle disagreements on major decisions relating to EIA reports, environmental permits and any conditions imposed

Under this statutory framework, all designated projects are legally bound to undertake appropriate level of environmental impact assessments. In addition, the project proponent is required to apply for an environmental permit which lays down the prevention and mitigation measures to be complied with during its construction, operation or decommissioning, unless exempted due to prior authorisation, approval or permission obtained from previous ordinances or regulations before 1 April 1998.

## Designated Projects

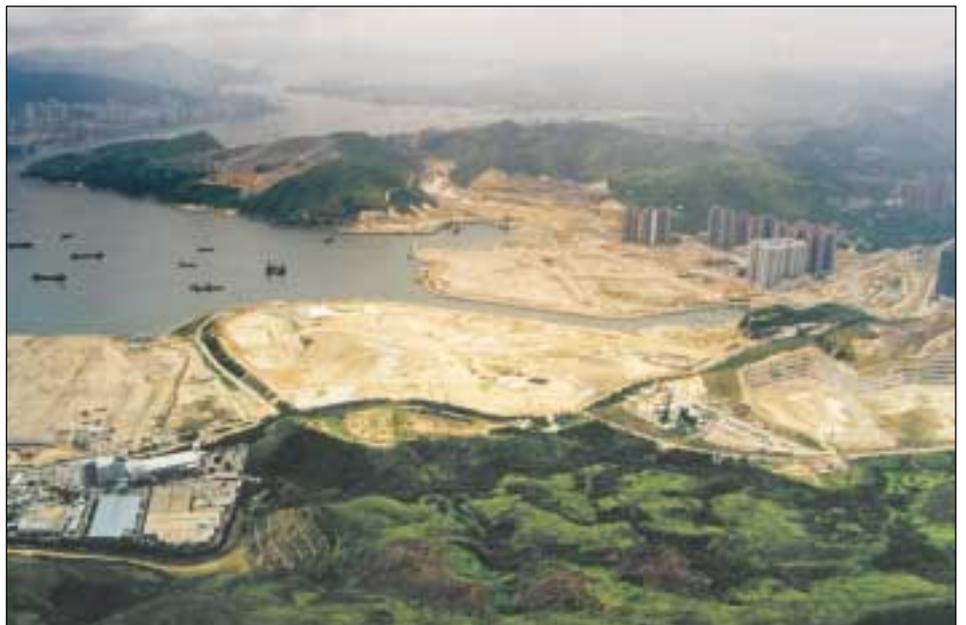
Based on more than ten years of experience in conducting environmental assessment studies for over hundreds of major development projects in Hong Kong, a list of designated projects was drawn up for the EIA Ordinance to ensure that projects or proposals that have significant environmental impact are subject to the statutory assessment process.

Designated projects range from large-scale developments such as the construction and operation of infrastructure projects to decommissioning of heavy industrial facilities. No less important are smaller projects that include activities within the sensitive boundaries of gazetted country parks, conservation areas, marine parks or reserves as well as sites of special scientific interest and cultural importance.

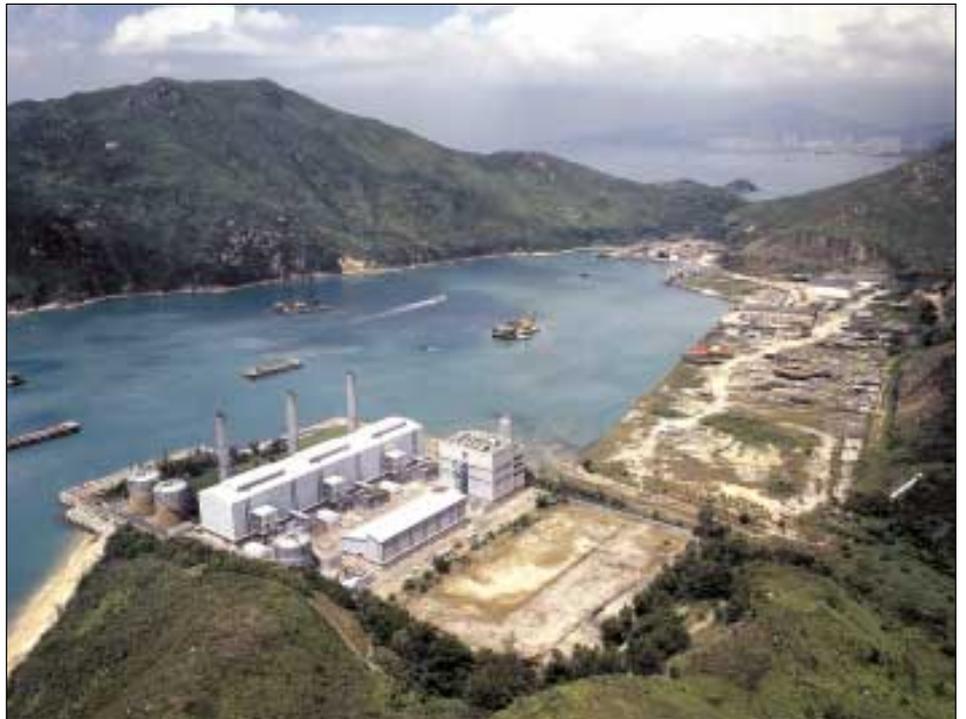
Designated projects are structured in two different schedules under the Ordinance.



River Trade Terminal at Tuen Mun



Tseung Kwan O Reclamation



Power Station at Penny's Bay



Hong Kong's first public golf course at Kau Sai Chau

Schedule 2 includes roads and railways, port and marine facilities, waterways and drainage works and other major infrastructure, residential and industrial developments. Such projects must follow the EIA process and also obtain environmental permits before work may begin.

Schedule 3 includes mainly engineering feasibility studies of large scale developments that must also follow the statutory EIA process. Such projects require approval of their EIA reports, but are not required to obtain environmental permits.

To cater for changing circumstances and needs, the designated project list may be amended by the Secretary for the Environment and Food by order published in gazette to include any new class of projects as designated projects. This provision was invoked in July 1999 to add a new class of designated project to Schedule 2 that includes theme parks and amusement parks with a site area of more than 20 hectares.

As contiguous projects can collectively qualify as a single designated project, any person can also seek confirmation from the Director under section 4(5) of the Ordinance to avoid possible offences.

## **SCHEDULE 2 - KEY DESIGNATED PROJECTS REQUIRING ENVIRONMENTAL PERMITS**

### PART I

- A. ROADS, RAILWAYS AND DEPOTS
- B. AIRPORTS AND PORT FACILITIES
- C. RECLAMATION, HYDRAULIC AND MARINE FACILITIES, DREDGING AND DUMPING
- D. ENERGY SUPPLY
- E. WATER EXTRACTION AND WATER SUPPLY
- F. SEWAGE COLLECTION, TREATMENT, DISPOSAL AND REUSE
- G. WASTE STORAGE, TRANSFER AND DISPOSAL FACILITIES
- H. UTILITY PIPELINES, TRANSMISSION PIPELINES AND SUBSTATIONS
- I. WATERWAYS AND DRAINAGE WORKS
- J. MINERAL EXTRACTION
- K. INDUSTRIAL ACTIVITIES
- L. STORAGE, TRANSFER AND TRANS-SHIPMENT OF FUELS
- M. AGRICULTURE AND FISHERIES ACTIVITIES
- N. COMMUNITY FACILITIES
- O. TOURIST AND RECREATIONAL DEVELOPMENTS
- P. RESIDENTIAL AND OTHER DEVELOPMENTS
- Q. MISCELLANEOUS

### PART II

#### DECOMMISSIONING PROJECTS

Please refer to Appendix I for a full listing of decommissioning projects.

## **SCHEDULE 3 - MAJOR DESIGNATED PROJECTS REQUIRING ENVIRONMENTAL IMPACT ASSESSMENT REPORTS**

1. Engineering feasibility studies of urban development projects with a study area covering more than 20 ha or involving a total population of more than 100,000 residents.
2. Engineering feasibility studies of redevelopment projects with a study area affecting populations of more than 100,000 existing or new residents.

\*An amendment to Schedule 2 was added in 1999 to include theme parks and amusement parks with a site area of more than 20 ha.

Figure 2A: Designated Projects listed in the Schedules of the Environmental Impact Assessment Ordinance

# The Statutory Environment Impact Assessment Process

The statutory process is outlined in Figure 2B and the key steps involved are highlighted below.

## 1. Application for Study Brief or Permission to Apply for Directly for an Environmental Permit

Any designated project begins its environmental assessment by submitting a project profile containing the project details to the Director of the Environmental Protection Department along with an application for a study brief or for permission to apply directly for an environmental permit.

The latter case is a fast-track provision for projects that fall within either one of the following three circumstances:

a) The impact of the project has been adequately addressed in a previous EIA report that is placed on the Register and the information and finding are still relevant. [section 5(9) of the Ordinance]

b) A material change to an exempted designated project, on review of its project profile containing mitigation measures, can still meet the requirements of the technical memorandum. [section 5(10) of the Ordinance]

c) The impact of the project is unlikely to be adverse and the mitigation measures described in the project profile meet the requirements of the technical memorandum [section 5(11) of the Ordinance]

## 2. Public Inspection

The availability of the project profile is advertised to the public and the Advisory Council on the Environment, who may send written comments during the 14-day inspection period to the Director of the Environmental Protection Department who decides the scope of the EIA study brief or conditions attached to the permission subsequently granted.

If the project profile submitted is found to be deficient, the applicant may be asked to re-advertise any further information supplied.



Typical project profile submitted by applicant for public inspection

### **3. Issue of Study Brief or Permission to Apply Directly for an Environmental Permit**

With the issue of a study brief, the applicant may begin the environmental impact assessment study according to the requirements set out in the study brief and the technical memorandum on the environmental impact assessment process.

On the other track, if permission to apply directly for an environmental permit is granted for the project, the applicant may proceed with the application for a permit after complying with any conditions imposed along with the permission.

### **4. Application for Approval of EIA Report**

After completing an EIA report containing various assessment results and mitigation measures for the environmental impacts the project may create during construction, operation or decommissioning, including alternative options for the project, the applicant may submit the report to the Director along with the application for approval.

During the review of the report, the Director will, in accordance with requirements set out in the technical memorandum, seek advice from the relevant government authorities on relevant matters.

### **5. Public Inspection of EIA Report**

Once it has been determined that the EIA report meets all necessary requirements, it is made available for public review and comment, this time for 30 days. Concurrently, the Advisory Council on the Environment is given 60 days to review the report and provide its comments. If required, the Director may request the applicant to provide further information he may require for his decision on the report. Finally, the Director makes his decision on approval of the EIA report based on the report, the comments received and any further information forwarded by the applicant.

### **6. Application for Environmental Permit**

When an EIA report is approved, the applicant may apply for an environmental permit. The permit contains a series of environmental conditions to be undertaken by the applicant for the protection of the environment in relation to the project. Conditions may include proactive measures to avoid environmental damages, mitigation measures identified in the report or monitoring and auditing requirements to ensure the environmental performance of the project meets acceptable standards.

### **7. Further Environmental Permits**

To ensure that the implementation of environmental permit conditions is treated as a continuous commitment, the issue of further environmental permits make possible the transfer and sharing of this responsibility between the project proponents and their agents or other parties.

### **8. Variation of Environmental Permit Conditions**

A variation of environmental permit conditions can be applied for by the applicant to deal with changes in the project. The Director may permit these changes if the project still complies with the technical memorandum but may call for an environmental impact assessment if material change is identified.

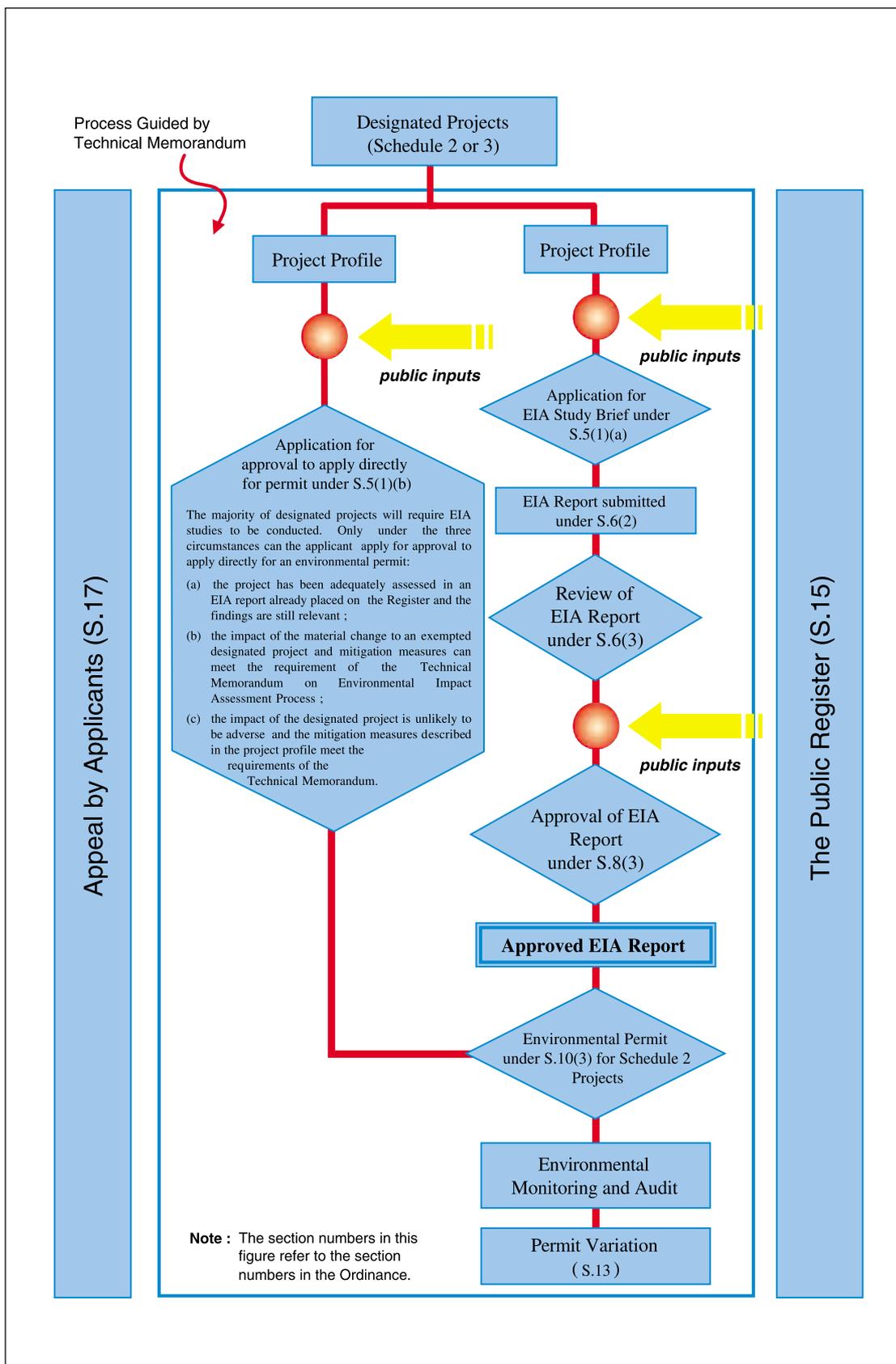


Figure 2B: The Statutory Environmental Impact Assessment Process

## 9. Surrender of Environmental Permit

A permit holder may surrender the whole or a part of the permit after ceasing to be responsible for implementing that particular part of the project.

The time limits for processing the different types of applications by various parties are described in Figure 2C:

	<b>Time limit for the Director</b>	<b>Time limit for the public</b>	<b>Time limit for the Advisory Council on the Environment</b>
Application for an EIA study brief	45 days of receiving the application or further information	14 days of placing the advertisement	14 days of placing the advertisement
Application for approval to apply directly for an environmental permit	45 days of receiving the application or further information	14 days of placing the advertisement	14 days of placing the advertisement
Review of EIA report	60 days of receiving the EIA report		
Public inspection of EIA report		30 days of placing the advertisement	60 days of receiving the EIA report
Approval of EIA report	30 days of the expiry of the public inspection period, or the receipt of comments from the Advisory Council on the Environment, or the receipt of further information		
Application for environmental permit	30 days of receipt of the application (the same time limit as the approval of EIA report if the two applications are submitted at the same time)		
Application for a further environmental permit	30 days of receipt of the application		
Application for variation of an environmental permit	30 days of receipt of the application		

Figure 2C: Time Limits for Processing Various Applications.

## The Register

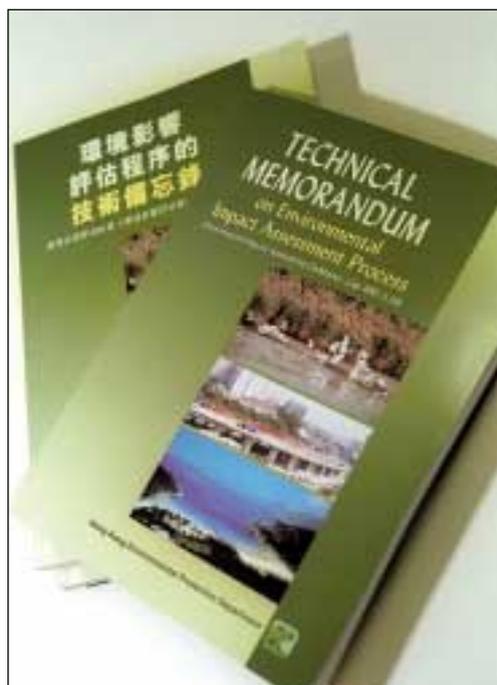
The Director has also set up a register as required under section 15 of the Ordinance containing the following information for public inspection (free of charge) during normal office hours.

- (a) project profiles he receives;
- (b) environmental impact assessment study briefs he issues;
- (c) his decisions on the applications for permission to apply directly for an environmental permit under section 5(9), (10) or (11);
- (d) environmental impact assessment reports he receives;
- (e) his decisions on the environmental impact assessment reports;
- (f) environmental impact assessment reports he held prior to the commencement of this Ordinance;
- (g) applications for environmental permits;
- (h) his decisions on the applications for environmental permits;
- (i) matters required by regulations.

## Technical Memorandum on the Environmental Impact Assessment Process

The technical memorandum serves as the guide for the Director to decide on matters under the Ordinance. It includes 12 sections and 22 annexes which govern in detail the procedures to be followed for each step in the EIA process including the content of each document to be prepared and the guidelines for their review.

In particular, the technical memorandum sets out the principles, procedures, guidelines, requirements and criteria for the assessment of various environmental factors. These include air, noise and water pollution, waste management, ecological impact, fisheries impact, visual and landscape impact and impact on sites of cultural heritage.



The technical memorandum is used as a yardstick for the environmental impact assessment process

# Environmental Impact Assessment (Appeal Board) Regulation

## Appeals

A formal appeal mechanism has also been provided for the Ordinance in the form of the Environmental Impact Assessment (Appeal Board) Regulation. Any applicant or permit holder may lodge an appeal against the decision of the Director on matters listed in section 17(1) of the Ordinance.

During any appeal, the Chair, who is a qualified district court judge, may convene an Appeal Board consisting of no less than three members.

## Offences and Penalties

There are two key types of offences relating to the construction or operation of a designated project listed in Part I of Schedule 2 or the decommissioning of a designated project listed in Part II of Schedule 2, namely;

- (a) work conducted without an environmental permit for the project; or
- (b) work conducted contrary to the conditions, if any, set out in the permit.

Persons for whom the designated project is constructed, operated or decommissioned and who permits the occurrence of such offenses are also liable. It is also an offence to separate contiguous projects, which collectively qualify as a designated project, in order to avoid the purpose of the Ordinance. The maximum penalties for the above offences are set out in Figure 2D

<b>Types of Offence</b>	<b>Maximum Fines and Imprisonment</b>
First	\$2 million and 6 months
Second	\$5 million and 2 years
Continuing	\$10,000 per day

Figure 2D : Maximum Penalties for Offences under the EIA Ordinance

Persons are also liable for offences relating to interference with the enforcement of the legislation.

