

**Confirmed Minutes of the 121st Meeting of
the Environmental Impact Assessment Subcommittee
held on 25 March 2013 at 2:00 pm**

Present:

Dr Dorothy CHAN, BBS (Chairperson)
Dr HUNG Wing-tat, M.H. (Deputy Chairman)
Prof CHAU Kwai-cheong, J.P.
Prof FUNG Tung
Dr HAU Chi-hang, Billy
Prof LI Xiang-dong
Prof NG Cheuk-ye, John
Miss NG Yuen-ting, Yolanda
Prof TAM Fung-ye, Nora, B.B.S., J.P.
Dr TSANG Po-keung, Eric
Mr WONG Lok-tak, Luther
Prof YEP Kin-man, Ray
Dr YIP Chee-hang, Eric
Miss Evelyn LEUNG (Secretary)

Absent with Apologies:

Dr Gary ADES

In Attendance:

Mr K F Tang, JP	Assistant Director (Environmental Assessment), Environmental Protection Department (EPD)
Mr Y K Chan	Assistant Director (Conservation), Agriculture, Fisheries and Conservation Department (AFCD)
Mr Ken Wong	Principal Environmental Protection Officer(Metro Assessment), EPD
Ms Joanne CHIN	Executive Officer (CBD), EPD
Ms Daicie TONG	Executive Manager (CBD), EPD

Action

Item 1 : Matters arising from the 120th meeting held on 25 June 2012

The Secretary reported that the minutes of the last meeting held on 25 June 2012 relating to the EIA report on the pilot project for public-private partnership conservation scheme at Sha Lo Tung had been confirmed by circulation in July 2012 and uploaded on the ACE's website for public information. The Council noted the EIA Subcommittee (EIASC)'s recommendations on the report at its meeting on 16 July 2012. EPD had relayed the Council's questions and concerns on the report to the

project proponent for clarification and supplementary information in August 2012. So far, EPD had not received further information from the proponent. The Council would be invited to consider the report again when there was response from the proponent.

2. There were no other matters arising from the minutes of the last meeting.

Item 2 : Meeting schedule of the EIA Subcommittee of 2013

3. The Chairperson invited Members to note the EIASC meeting schedule in 2013 which the Secretariat issued on 19 March 2013. She informed that the Subcommittee in general would meet on a monthly basis when there was submission of EIA report(s) or issues to be discussed. As there was a substantial number of EIA reports expected for submission to EIASC in the coming months, she called for Members' understanding/agreement that special meetings might have to be convened in July and/or August during normal summer recess. The Secretary would check on the availability of Members in anticipation of the need of a special meeting to be held on 19 August.

[Post-meeting note: A quorum had been formed in case EIASC had to convene a special meeting on 19 August to consider urgent EIA reports.]

4. The Chairperson also advised that she and the Deputy Chairman would not be available to lead the scheduled meeting on 16 September as both would be on duty/at conference outside Hong Kong. Should there be EIA report(s) for discussion in September, the Secretary would identify an alternative meeting date which could best accommodate Members' schedule.

Item 3 : Revised Modus Operandi of the EIA Subcommittee

5. The Chairperson welcomed Mr K F Tang, who had replaced Mr C W Tse as Assistant Director (Environmental Assessment) of EPD and attended the EIASC meeting for the first time.

6. Mr K F Tang briefed Members on the role of ACE and EIASC in the EIA process and highlighted the key proposed improvements to the *Modus Operandi* of the Subcommittee which included –

- (a) Members would be invited to consider selection of an EIA report for submission to ACE after it was submitted to EPD for approval for public inspection;
- (b) EIASC meeting would be convened to consider a selected EIA report after completion of the public inspection period. The EIA report, the executive summary and relevant documents would be issued to Members normally two weeks before the scheduled meeting for

advice on whether the project proponent would be required to attend the meeting. EPD in parallel would summarize the public comments on the report received during the inspection period for Members' reference before the meeting;

- (c) The project proponent would be required to provide a concise and objective account of the main concerns which the general public and interest groups had made on the project during the EIA study and the public inspection stages, and how these concerns were addressed in the EIA report; and
- (d) Members would be assigned to consider specific subject areas of an EIA report ("lead" Members), who would seek advice from the relevant authorities as necessary so as to ensure a better structured and focused discussion of the EIA report at the meeting.

7. The Chairperson invited Members for comments on the revised *Modus Operandi*. A Member welcomed the proposed revisions, in particular that the selection of an EIA report for discussion by ACE would only be made after the project proponent had submitted the report to EPD for approval for public inspection. The change could allow Members to make a more timely assessment having due regard to the prevailing knowledge and public concerns on the project. In response to the Member's suggestion to incorporate details of the selection arrangements in the *Modus Operandi*, Mr K F Tang advised that it might be prudent not to fix the exact timing of EIA report selection in the document so as to allow some flexibility for Members in the process. He supplemented that EPD would refer the proponent to the *Modus Operandi* when he was advised that a submission to ACE was required.

8. The Member referred to his submission which had been circulated to Members before the meeting. In gist, he suggested to default all EIA reports to be submitted to ACE for discussion unless half or more Subcommittee Members "dis-select" a report which they consider not necessary for the project proponent to give a presentation. He further proposed to add a provision for the Subcommittee to re-select an EIA report which had not been selected at an earlier stage in case of any unforeseen circumstances.

9. A Member asked whether comments from EIASC Members and from the public received during the public inspection period would be forwarded to the project proponent for consideration before the Subcommittee meeting, and what would be the appropriate timing for the "lead" Members to seek advice from the relevant authorities as proposed in the new arrangement. Another Member suggested that the scope of expert advice should include professionals and experts independent of the relevant authorities, and to retain the original clause on the matter in the revised *Modus Operandi*. A Member supported the Member's observation.

10. Mr K F Tang in reply confirmed that same as the current practice, public comments received would be passed to the project proponent for consideration and

response as necessary. He advised that the relevant authorities referred to authorities under the Technical Memorandum on the EIA process (TM) on specific topics, e.g. AFCD on ecology and fisheries, EPD on air and noise, and Planning Department on visual impact. The “lead” Members might seek advice from these authorities before the meeting as their representatives might not be present at the Subcommittee meeting. In case subject issue(s) were considered essential for discussion at the meeting, these representatives might be invited to attend the meeting.

11. A Member asked about the detailed arrangement on the public and ACE consultation periods in the revised *Modus Operandi* and whether the revised arrangements would apply to those on-going projects in view of the possible lengthening of the EIA process. Mr K F Tang explained that under the EIA Ordinance, there was no explicit provision on whether the 30-day public inspection period and the 60-day consultation with ACE should run concurrently or in series. Currently, the project proponent would normally make arrangement with the ACE Secretariat to commence the ACE consultation concurrently with the public consultation and to tie in with the ACE and EIASC meeting schedules. If the new selection arrangement was to be adopted, for EIA reports selected by ACE, consultation with the Council would commence after completion of the 30-day public inspection period. An EIA report would hence take about 90 days to complete both the public and ACE consultations as compared with the present 60-day period. Considering the possible impact on the project proponent due to this lengthening of the EIA process, EPD had discussed with the Government’s works departments (which made up the majority of all proponents with EIA studies in hand) on applying the revised arrangements to their on-going projects after the new selection arrangement became effective. Mr Tang advised that so far the feedback received had been receptive.

12. In response to a Member’s concern on whether public comments received during the public inspection period could be made available in good time for reference by Members, Mr K F Tang said that experiences indicated that the majority of public comments would be sent to EPD towards the end of the inspection period. As such, his office could only collate all comments upon conclusion of the inspection period, and to take one to two weeks to prepare the summary for Members’ reference. EPD would endeavour to provide the summary before the scheduled EIASC meeting so that Members could make due reference of the full set of public comments before they discussed the EIA report and prepared their recommendation to ACE. Two Members shared the concern and suggested the Subcommittee to give time for EPD to try out the new arrangement. The Chairperson said that with experience gained, Members could suggest further improvements to the arrangement if considered necessary.

13. The Chairperson remarked that EIASC served as the technical support group to ACE and provided recommendation on EIA reports to the Council, which in turn had its statutory duty under the EIA Ordinance to provide comments to the Director of Environmental Protection (DEP). She opined that the Subcommittee had a significant role to play to assist ACE to comment on and facilitate progress of

essential development projects in Hong Kong, having due regard to the right balance between public and environmental interests in the process.

14. The two Members supported the new arrangement and shared the view that the extended period for completion of both the public and ACE inspections should be relatively insignificant in the context of the entire project life. Mr K F Tang said that his office would help explain the rationale and benefits of the enhanced consultation process to the project proponents during the implementation of the revised *Modus Operandi*.

15. The Chairperson invited Members to decide on the following three issues pertaining to the revised *Modus Operandi* –

- (a) how to apply the revised *Modus Operandi* on on-going and new projects;
- (b) whether to retain the item on inviting professionals/experts to EIASC in the revised *Modus Operandi*; and
- (c) whether to default all EIA reports for submission to ACE unless half or more EIASC Members “dis-select” the project where they considered a discussion of the project not necessary.

16. Members were supportive that the revised *Modus Operandi* should apply to new projects only. For those on-going projects, EPD would discuss and agree with the project proponents on adopting the new arrangements as far as practicable. It was the unanimous agreement to retain the provision for EIASC to invite professionals/experts to advise on specific subject areas if required. Members also agreed that the revised *Modus Operandi* had already mapped out the procedures to follow in the selection of EIA reports. As there was no provision in the EIA Ordinance to dis-select an EIA report, it would be prudent for ACE to follow the EIA Ordinance and select EIA reports for submission to ACE. Under the revised arrangement, Members would be invited to select EIA reports for submission to ACE only after the reports had been submitted for approval for public inspection, the situation that would require ACE’s re-consideration and discussion of those not selected should be very rare. However, should there be special circumstances, Members might still require an EIA report which was not selected earlier for discussion by EIASC and ACE so long as meetings could be arranged to enable ACE to give comments on the report to DEP within the 60-day statutory consultation period.

17. In reply to a Member’s question on any provision in the EIA Ordinance for requiring the project proponents of designated projects to make submission of their respective EIA reports to ACE, Mr K F Tang referred Members to section 6(7) of the EIA Ordinance which read “*The applicant shall present his environmental impact assessment report to the Advisory Council on the Environment at the times and places advised by the Director if the applicant is required to submit the report to the Council.*” He suggested refining the relevant part of the revised *Modus Operandi* to clearly reflect this requirement.

18. Responding to the Member's further enquiry on the implications of projects not selected for submission to ACE (non-selected projects), Mr K F Tang clarified that for non-selected projects, EIASC and ACE would not convene meetings to discuss the EIA reports. The project proponents would be required to submit the Executive Summaries (ESs) of the EIA reports to EIASC, and Members would be invited to submit their comments, if any, to DEP direct for consideration within the statutory public inspection period of 30 days. At the ACE meeting immediately following the issue of the ESs of the EIA reports, the EIASC Chairperson would report to ACE about the submission of these ESs for information of Council Members and record as projects not selected for discussion. The non-selection in no way should be taken as endorsement of the EIA report by ACE.

19. A Member asked whether the public would be aware of projects that had been selected for submission to ACE, especially those selected projects which Members would not require a presentation by the project proponent at the meeting. A Member advised that EIASC would report its recommendations to ACE and such would be recorded in the minutes of meeting. The Secretary supplemented that the meeting agenda of EIASC meetings would be uploaded on the ACE's website prior to the meetings. Members of the public would have knowledge of the selected projects for discussion and might observe the presentation and question-and-answer sessions at the public viewing room during the discussion of the subject items. The confirmed minutes of the Subcommittee meetings would also be uploaded on the ACE's website for information to the public.

20. The Chairperson said that to facilitate effective deliberation at EIASC meetings, there was a proposal to assign dedicated Members to lead discussions (i.e. "lead" Members) and advise the Subcommittee on specific subject areas of EIA reports. The "lead" Members would consider the assigned subjects of an EIA report and seek advice from the relevant authorities as necessary before the meeting. The subject areas were drawn up based on the relevant annexes of the TM. The "lead" Members were proposed in pairs for each subject area in case one of them could not attend the meeting. A Member volunteered to join the study area on ecology and fisheries.

21. The meeting agreed to assign "lead" Members to various subject areas as below –

Subject area	"Lead" Members
Air quality & Hazard to life and noise (Annex 4 and Annex 5 of TM)	Dr Dorothy Chan / Dr Hung Wing-tat
Ecology and Fisheries (Annex 8 and Annex 9 of TM)	Prof Nora Tam / Dr Gary Ades / Dr Billy Hau
Water pollution and Waste management (Annex 6 and Annex 7 of TM)	Prof Fung Tung / Mr Luther Wong
Visual & Landscape and Sites of cultural heritage (Annex 10 of TM)	Prof Chau Kwai-cheong / Prof John Ng

22. The Secretariat would incorporate Members' comments on the revised *Modus Operandi* and circulate the further revised version to Members for

confirmation before the Subcommittee would seek endorsement of ACE at the next Council meeting scheduled for 22 April.

[Post-meeting note: The proposed improvements to the revised Modus Operandi were circulated for Members' comment on 26 March 2013.]

“Register of EIA reports considered by ACE since 2010” and “Submission forecast of EIA reports under the EIA Ordinance in 2013”

23. The Chairperson drew Members' attention to the “Register of EIA reports considered by ACE since 2010” and “Submission forecast of EIA reports under the EIA Ordinance in 2013” which had been issued to Members before the meeting. Mr K F Tang briefly introduced the upcoming submissions of EIA reports to EIASC expected in the coming months. At the suggestion of a Member, the meeting agreed to go through the selection process afresh whereby Members would be invited to consider the selection when EPD received an EIA report for approval for public inspection, irrespective of the previous selection outcomes. In anticipation of a substantial number of EIA reports to be considered, a Member pointed out that the Subcommittee might have to consider more than two EIA reports in a meeting if required. The Chairperson reminded Members that where lengthy discussions were expected, they had to make appropriate arrangement in their attendance so as to maintain the necessary quorum required for the meeting. A Member asked for information on projects that had been selected and the upcoming EIA reports to be submitted so that Members could make an educated assessment of the workload when they were invited to make the selection. Mr K F Tang agreed that he would provide the updates to Members on a regular basis. EPD would liaise with the project proponents with the attempt to better even out the timing of the submissions.

Mr K F
Tang

Meeting logistics

24. The Chairperson advised that at the internal discussion before the project proponent was invited in to give the presentation, she would invite questions/comments from “lead Members” according to the assigned subject areas for a more structured discussion at the meeting. A Member suggested that other Members were welcomed to forward their views on particular subject areas to the corresponding “lead” Members to facilitate the question-and-answer session.

Matters relating to EIA study

25. A Member pointed out that ACE had faced increasing challenge from the community as the public often put up a fundamental question on the need of the project which was outside ACE's purview to address or defend. He suggested if EPD could require the project proponent to organize more public engagements to justify the need for the project. He furthered that ACE had received public comments challenging that the methodologies adopted by the proponent were not in compliance with the TM or the EIA Ordinance. It would be beneficial if EPD could address and draw Members' attention on these issues which could facilitate deliberation at the

meeting. This was echoed by another Member. The Member stated that EPD must have corresponded with the proponent during the drafting of the EIA report on improvements or supplementary information required before it could be formally submitted to EPD for approval of public inspection. He asked if EPD could give these broad details to Members to assist in their consideration. Mr K F Tang said that as a current practice, EPD would sort out and broadly outline the significant environmental issues of concerns in the EIASC discussion paper for Members' attention. Mr Y K Chan added that changes to the scope and/or design of a project generally would be set out in the EIA report as alternatives and mitigation measures.

26. A Member suggested and Members agreed that for very significant development projects with far-reaching impact in the community, it would be beneficial to organize site visits to allow Members to have better understanding on the projects before they considered the EIA reports. Mr K F Tang noted the request and would liaise with the project proponents and ACE Secretariat to arrange the visits as required.

Mr K F
Tang

Public engagements

27. A Member suggested if ACE could take the initiative to organize public hearings/fora to gauge public views on an EIA report which had aroused particular public concern/debates. The Chairperson suggested that it would be more appropriate for the matter to be discussed at the Council meeting. Her initial view was that it was the responsibility of the project proponent to gather public views on his project during the EIA study stage and to institute practicable measures and mitigation to meet the statutory requirements as well as demands in the community. The project design would have already reached a very advanced stage by the time the EIA report was submitted to ACE for consideration, and any material changes, if required, could not be possible at such a late stage. A Member agreed that the proponent would have great reservation in making substantial changes at this advanced stage of EIA study. He opined that the proponent should conduct public engagements early and invite ACE to attend. Mr K F Tang advised that EPD had been liaising with government works departments regarding the proposal of enhancing the public engagement process in order to effectively collect and reflect in the EIA report the main public concerns and how they were addressed in the project design during the EIA study.

28. In reply to a Member's proposal for ACE to invite professionals/experts to brief the Council on their views on EIA reports of great public interest. Mr K F Tang remarked that different experts might often have different and sometimes conflicting views. Members would have to well justify their decision in inviting some professionals/experts but not others. ACE might be accused of being selective in receiving advice that could be subject to challenge.

29. A Member opined that while project proponents had the responsibility to conduct public engagements, ACE Members should also exercise prudence in attending the fora organized by other interest groups, lest ACE might be challenged

of favouring or prejudicing against any interest groups. This was echoed by a Member. The Member opined that public perception was very important, and there was no room for comprising ACE's objective stance in any one EIA report. In order to upkeep its impartial stance in an EIA study, a Member considered that ACE should only seek advice from independent experts who had no involvement whatsoever in the project.

30. The Chairperson said that the subjects on opening up ACE meetings, the Council's participation in the EIA study stage as well as ways to enhance public perception on the ACE's role in the statutory EIA process were all related to the operation of the ACE full Council. She would defer to ACE to hold further deliberation on these subjects. The Subcommittee should adhere to the *Modus Operandi* in offering its advice to ACE and avoid unwarranted risks of exposing the Council to possible challenges or even court actions. She reminded Members to give practical assessment on their capacity to take on the workload before coming up with any proposal to revise the *Modus Operandi*, as both ACE and EIASC were under a very tight legal timeframe to give views to DEP on EIA reports. A Member echoed this view. He informed that the revised *Modus Operandi* under proposal had included great improvement to the EIA process and the meeting logistics and suggested Members to give time for all the relevant parties, i.e. EIASC, EPD and the project proponents to adapt to the revised procedures.

Item 4: Any other business

Tentative items for discussion at the next meeting

31. The Chairperson informed Members that the agenda was being compiled. Members would be informed in due course.

Item 5: Date of next meeting

32. The Chairperson informed Members that the next meeting was scheduled for 29 April 2013.

**EIA Subcommittee Secretariat
April 2013**