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**ACE Paper 7/2017**  
***For information by circulation***

**The Roles of the Advisory Council on the Environment  
in the Implementation of  
the Environmental Impact Assessment Ordinance (Cap. 499)**

**PURPOSE**

This paper sets out for Members' information the roles of the Advisory Council on the Environment (ACE) in relation to the implementation of the Environmental Impact Assessment Ordinance (EIAO).

**THE STATUTORY EIA PROGRAMME**

2. The EIAO has been in operation since 1998. Its purpose is to provide for assessing the impact of designated projects on the environment, thereby protecting the environment. The "Technical Memorandum on Environmental Impact Assessment Process" (TM) issued under section 16 of the EIAO sets out the principles, procedures, guidelines, requirements and criteria for handling various EIA matters, which among other things, include –

- (a) the technical content of a project profile, an EIA study brief or EIA report;
- (b) deciding whether a designated project is environmentally acceptable;
- (c) deciding whether an EIA report meets the requirements of the EIA study brief;

- (d) taking advice from other relevant Authorities;
- (e) the issue of environmental permits (EP); and
- (f) the imposition of environmental monitoring and audit requirements for designated projects as conditions in environmental permits, etc.

3. All designated projects are required to be assessed in accordance with the prescribed methodologies as set out in the EIA study brief and the TM; and more specifically, the assessed environmental impacts must meet the criteria and requirements as stipulated in the annexes of the TM in respect of various environmental issues and subject areas.

4. On implementation and enforcement, the EIA programme involves a wide range of professional disciplines. Though EPD is the main department statutorily assigned to implement the EIA programme and enforce the EIAO, the TM stipulates that advice shall be taken by EPD from a list of Authorities on specified issues and matters. For example, EPD is required to take advice of the Director of Agriculture, Fisheries and Conservation on nature conservation and ecological assessment matters, Director of Planning on visual and landscaping matters, Director of Marine on marine matters, Director of Health on human health matters and Director of Civil Aviation on civil aviation matters, etc. EIA is a transparent process and EPD implements the statutory EIA programme by taking advice from the specified Authorities as well as in accordance with the principles, criteria and requirements as stipulated in the EIAO and the published TM. EPD, together with these Authorities, also enforce the EP through site inspections, review of environmental monitoring and audit reports provided by qualified Independent Environmental consultants that project proponents must engage under EP, and prosecution actions on breaches of relevant environmental laws, etc. to ensure that the EP holders comply with permit conditions. As usual, all public officers involved are required to deliver their duties in a professional and impartial manner.

## **THE STATUTORY CONSULTATIVE ROLE OF THE ACE UNDER THE EIAO**

5. ACE is the Government's principal advisory body on matters relating to environmental protection and nature conservation. The statutory roles of the ACE in the EIA process are stipulated under Sections 5(6) and 7(5) of the EIAO as follows: -

- (a) Section 5(6) in relation to provision of comments on project profiles submitted for applying for an EIA brief -

“The Advisory Council on the Environment and any person may comment on a project profile to the Director on environmental issues covered by the technical memorandum relevant to the designated project within 14 days of its being advertised. The Director is to consider any comments received in drawing up the study brief for the designated project.” and

- (b) Section 7(5) in relation to provision of comments on EIA reports under public inspection –

“The Advisory Council on the Environment may give any comments it has on the report to the Director within 60 days of its receiving a copy of the report.”

6. After receipt of the comments from the ACE, the EPD will accordingly and carefully examine these together with other comments received from the public and decide whether or not to approve an EIA report and issue an EP for a designated project. If an EP is granted, the EPD may impose conditions, which may include the conditions recommended by the ACE wherever appropriate under the EIAO and the TM.

7. To facilitate delivery of the statutory consultative role under the EIAO, the ACE has set up the standing EIA Subcommittee (EIASC). The terms of reference of the Subcommittee are –

- (a) to receive and study EIA reports of major development projects; and
- (b) to report on its deliberations and findings and make recommendations to ACE.

The ACE has also set out very detailed *modus operandi* to guide the operation of the EIASC. It is attached at the **Appendix** for easy reference though Members are very familiar with it.

## **MATTERS OUTSIDE THE STATUTORY CONSULTATIVE ROLES OF THE ACE**

8. The legal roles of ACE in the statutory EIA programme are laid down under the EIAO. However, from time to time, some members of the public or individual organizations may raise concerns on specific major projects, and some might draw

widespread attention in the community, the media, and/or the Legislative Council. At the last meeting of the ACE on 13 March 2017, some Members also expressed the wish to be informed of serious concerns/questions flagged up on these major projects, particularly public works, and the Government's responses given ACE's roles in the EIA process as set out under the EIAO.

9. It is important to note that for cases involving investigation being conducted under the law, the EPD or the relevant Authorities may not disclose information or give views on individual cases until the legal process, if any, has been concluded so as to avoid jeopardizing the investigation and/or undermining the judicial process. Notwithstanding the above, should individual members wish to seek clarification on the compliance of EP by the project proponents and their contractors on specific environmental issues that have attracted widespread attention in the Legislative Council, the community and/or, media reports, they could pass the request for information to the ACE Chairman or the EIASC Chairman. If they deem necessary, they might pass the request for information through the ACE Secretariat to the EPD. EPD will coordinate with relevant parties to see the best way in meeting such request for information e.g. information notes or briefings at ACE or EIASC meetings.

10 In case EPD, other relevant Authorities, and/or project proponents of the major public works have issued press releases and/or relevant written document to the Legislative Council on such matters relating to compliance of EP and/or environmental issues involving major public works projects as mentioned above, the ACE Secretariat (or EPD) will also continue to make such available to members as appropriate.

**Environmental Protection Department**  
**March 2017**

**MODUS OPERANDI OF THE  
ENVIRONMENTAL IMPACT ASSESSMENT SUBCOMMITTEE OF  
THE ADVISORY COUNCIL ON THE ENVIRONMENT**

**Purpose**

This paper sets out the *modus operandi* of the Environmental Impact Assessment (EIA) Subcommittee of the Advisory Council on the Environment (ACE) so as to facilitate smooth proceedings of subcommittee meetings. The current *modus operandi* was last updated and endorsed by ACE in July 2009.

**Background**

2. ACE is the Government's principal advisory body on matters relating to environmental protection and nature conservation. The terms of reference of ACE are –

- (a) to keep under review the state of the environment in Hong Kong; and
- (b) to advise the Government, through the Secretary for the Environment, on appropriate measures which might be taken to combat pollution of all kinds, and to protect and sustain the environment.

3. The EIA Subcommittee is set up under ACE to study EIA reports of major development projects. It also comments on strategic environmental assessment reports of major planning projects. The terms of reference of the EIA Subcommittee are –

- (a) to receive and study EIA reports of major development projects; and
- (b) to report on its deliberations and findings and make recommendations to ACE.

**EIA Process**

4. ACE and the EIA Subcommittee are involved in three main stages of the EIA process, namely commenting on the project profiles for designated projects, selection of EIA reports for submission to ACE and commenting on selected EIA reports. In accordance with ETWB Technical Circular (Works) No. 13/2003, the statutory gazetting of a project under the relevant ordinances can be done in parallel with the EIA process. Separately, consultation with District Councils and other relevant parties may proceed in advance of or in parallel with the submission of EIA reports to the EIA Subcommittee.

## **Project Profiles**

5. Under section 5 of the EIA Ordinance, ACE and members of the public may comment on the project profile of a designated project within 14 days of it being advertised. It is hence not necessary for the EIA Subcommittee to present to the Director of Environmental Protection (DEP) the collective view of the EIA Subcommittee on project profiles. To ensure that comments on project profiles, if any, are given to DEP within the statutory time limit, individual ACE Members would write to DEP directly. Where necessary, the ACE Member may copy his/her comments to the Chairman and Members for information.

## **Selection of EIA Reports**

6. Project proponents of designated projects will have to present their EIA reports to ACE if they are required to submit the reports to the Council. Members of the EIA Subcommittee will be asked to select those projects which they consider should require a presentation to the EIA Subcommittee by the project proponent. The selection outcome is for internal planning of the schedule of the EIA Subcommittee and will not be divulged to the project proponent. Only those projects selected by half or more of EIA Subcommittee Members will be selected. The project proponent concerned will be notified of the selection outcome only after DEP has decided that the EIA report is ready for public inspection and submission to ACE for advice.

7. During the project selection process, if individual EIA Subcommittee Member has special concerns/comments on a certain project, he/she could draw the EIA Subcommittee Chairman's attention to his/her concerns/comments and the Chairman would consider the need to review the decision on selection of the EIA report for submission to ACE.

8. For projects not selected, the project proponent will be required to send the Executive Summary of the EIA report to the EIA Subcommittee. Members would pass their comments, if any, to DEP directly within the prescribed public inspection period and if necessary, copy his/her comments to the Chairman and Members of the EIA Subcommittee for information. At the ACE meeting immediately following the issue of the Executive Summaries of the EIA reports, the EIA Subcommittee Chairman will report to ACE about the submission of these Executive Summaries for information of Members and record as projects not selected for discussion.

## **Meeting Arrangements**

9. The EIA Subcommittee will basically meet on a monthly basis. Meetings will be held when there is submission of EIA report(s) or issue(s) to be discussed.
10. To facilitate focused discussion, the EIA Subcommittee will generally consider no more than two EIA reports in each meeting. EPD will prepare a paper on each EIA report to be submitted to the EIA Subcommittee highlighting the key environmental issues and major findings of the EIA study. Upon expiry of the report inspection period by the general public, EPD will summarize all public comments received during the period for consideration of the EIA Subcommittee. The project proponent, where applicable, will provide the EIA Subcommittee with a report on the site selection process of the project, setting out the alternative sites that have been considered and the reasons of the selection of the particular site when such information is not provided in the EIA report. The paper, the EIA report and the site report, if any, will normally be issued to EIA Subcommittee Members two weeks before the scheduled meeting. The summary of public comments will also be given to Members before the meeting. Members will be asked to indicate whether it is necessary for the project proponent to attend the meeting or the report could be considered by circulation. Project proponents will be informed accordingly before the scheduled meeting.
11. Summary of the public comments will also be provided to non-EIA Subcommittee Members for reference to facilitate their discussion of the EIA Subcommittee's recommendations at the next ACE meeting before the Council tenders its comments to DEP on the EIA report as provided for under the EIA Ordinance.
12. Members of the EIA Subcommittee may raise questions in writing on an EIA report before the scheduled meeting and the project proponent should provide written response to the Secretariat at least three working days before the meeting.
13. Each discussion item on an EIA report would include a Presentation Session by the project proponent, a Question-and-Answer Session and Internal Discussion Sessions. The Presentation Session and the Question-and-Answer Session are open up for broadcasting and members of the public can view the sessions real time in the public viewing room. The EIA Subcommittee would allocate as much time to the Question-and-Answer Session as possible.
14. The presentation by the project proponent should cover, inter alia, the major conclusions and recommendations of the EIA study. In addition, the project proponent should provide a concise and objective account of the main concerns of the general public and interest groups made known during the EIA study and the public inspection stages, and explain how these concerns are addressed in the EIA study.

## **Criteria for Assessing EIA Reports**

15. EIA reports will be assessed by the EIA Subcommittee according to the requirements of the Technical Memorandum on the EIA Process and the study brief of the individual projects issued by DEP.

## **Recommendations to the Full Council**

16. The EIA Subcommittee can make one of the following recommendations to the full Council –

- (i) endorse the EIA report without condition; or
- (ii) endorse the EIA report with condition(s); or
- (iii) reject the EIA report and inform the proponent the right to go to the full Council.

17. If the EIA Subcommittee cannot reach a consensus (i.e. if two or more Members do not agree with the conclusion of the EIA Subcommittee) during the meeting, it may –

- (i) ask for a second submission to the EIA Subcommittee; or
- (ii) defer the decision to the full Council and highlight issues or reasons for not reaching a consensus for the full Council's deliberation.

18. Other than the scenario in paragraph 17 above or the EIA Subcommittee Chairman considers it appropriate, the recommendations of the EIA Subcommittee will not be discussed in detail in the full Council.

## **Other Rules that apply to EIA Subcommittee Meetings**

19. Apart from the procedures mentioned above, the following rules also apply to EIA Subcommittee meetings –

- (i) the quorum for EIA Subcommittee meetings should be half of the number of EIA Subcommittee Members, including the Chairman;
- (ii) ACE Members who are not EIA Subcommittee Members may attend EIA Subcommittee meetings and participate in the discussion of the meetings but they shall not vote when votes are taken;



- (iii) Council Members and EIA Subcommittee Members should declare direct and indirect interest before deliberating on agenda items so that the EIA Subcommittee Chairman could decide whether they should take part in the discussion or in the case of EIA Subcommittee Members to vote;
- (iv) the confirmed minutes of the EIA Subcommittee (with Members' names deleted) are uploaded on the ACE's website for public inspection;
- (v) the Presentation Session and Question-and-Answer Session of a discussion item on an EIA report at the EIA Subcommittee meeting requiring the attendance of the project proponent team will be opened to the public. The opening up of these sessions is an administrative arrangement only. The open meeting arrangements are not applicable to internal discussion sessions of a discussion item on an EIA report and all other sessions of the meetings of the EIA Subcommittee;
- (vi) special meetings may be called to consider urgent items. The EIA Subcommittee will consider each case individually should there be requests for direct submissions to the full Council;
- (vii) there will not be a limit on the number of professionals/experts to be invited to each EIA Subcommittee meeting for items requiring their assistance. In these cases and where votes are taken, these professionals/experts shall not vote; and
- (viii) to facilitate effective deliberation at meetings of the EIA Subcommittee, the EIA Subcommittee may appoint Members to advise the EIA Subcommittee on specific subject areas of EIA reports. The appointed Members would consider the assigned subjects of an EIA report, and seek advice from the relevant authorities designated under the EIAO as necessary before EIA Subcommittee meetings.

20. The revised *modus operandi* of the EIA Subcommittee will take effect upon endorsement of ACE.

**EIA Subcommittee Secretariat**  
**April 2013**