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Title: Public Participation Window, Time and Outcome

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Abstract

In this paper, two EIAs from Hong Kong are evaluated with regards to the role played by public participation for project design. For this purpose, cases are chosen where public participation in EIA was said to have made a positive contribution to the project. Our cases show that environmental requests need to be made early enough in order to have an impact to the project implementation. Furthermore, stakeholders should have specific knowledge to connected their environmental concerns with overall project elements. EIA should take a more active role in establishing the connection between environmental concerns and project implementation.

Introduction

The importance of public participation for effective Environmental Impact Assessment (EIA) practice has been highlighted by many authors (see e.g. Nadeem & Fischer, 2011). It has become widely recognised that public participation can generate information for decision making and help resolve social-environmental conflicts. O'Faircheallaigh (2010) noted that public participation is not only a way for obtaining information, it could also help solving problems through suggestions of concepts, solutions and mobilising resources. Glucker et al (2013) noted that public participation should contribute to the identification and resolution of conflicts and facilitate project implementation.

EIA practice in Hong Kong is guided by the legislative framework of the Environmental Impact Assessment Ordinance. The statutory EIA procedure in Hong Kong has three major stages; (1) application of the EIA study brief, (2) application for approval of the EIA report, and (3) application of the Environmental Permit (EP). To trigger EIA, a project proponent needs to submit a project profile for the application of an EIA Study Brief. The project proponent then needs to prepare an EIA report according to the legislative requirements and the EIA study brief. They can apply for the approval of the EIA report and the EP at the same time or separately. However, the EP can only be obtained after the EIA report has been approved. Within the EIA process, there are two statutory public inspection windows; the first one is the public inspection of project profile during the application of the EIA study brief; the second one is the public inspection of the EIA report before the Director's decision of approval. Occasionally, the environmental permit would require the project proponent to conduct stakeholder/community liaison, which acts as the third public participation window.

EIA is usually conducted in parallel to the engineering design stages, and the outcome of the EIA would be incorporated into the project design and contract documentations (see e.g. Leung et al., 2011). While the project profile and the EIA report require a different level of engineering details, additional requirements with regards to the details required reflect an expectation of project development during the preparation of an EIA report. The two statutory public inspection windows of project profile and EIA report as well as the optional stakeholder/community liaison are therefore not only aligned with a different stage of EIA, but also to a different stage of project development.

Case Studies

Two cases were selected for examining how public participation in EIA can positively influence project design. These are subsequently described. In this context, with regards to examining public participation, particular attention is paid to the timing of requests and the procedural stages at which these were subsequently addressed.

Case 1: Conservation of biodiversity in Tung Chung River and Bay

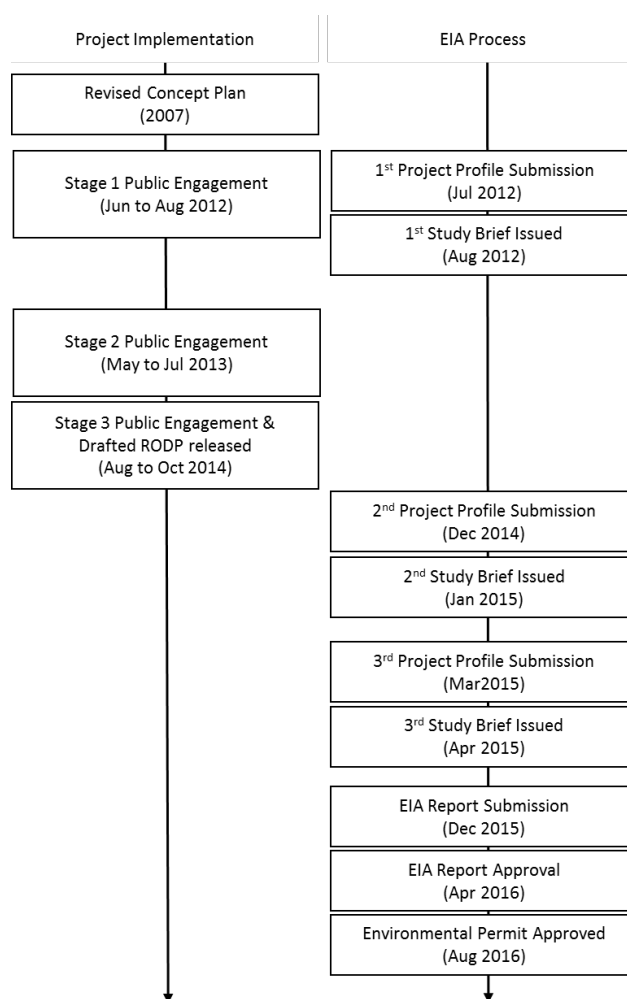
According to the Project Profile, Tung Chung New Town Extension is a planning study project driven by the Civil Engineering and Development Department (CEDD). It aims at reviewing and establishing the feasibility of further development of Tung Chung. It is also supposed to help meeting planning and population targets. **Diagram 1** shows the timeline of the major events of the project.

During the submission of the Project Profile in 2012, several environmental NGOs made submissions about the potential impact of the natural habitat and ecological biodiversity of the Tung Chung River. Several of the major environmental NGOs issued joint statements about their objection to any civil engineering work at the Tung Chung River and Bay, while pointing out that the area contains species with conservation importance, including trees, freshwater fishes, butterflies and others. As a response, the EIA Study Briefs contains provisions requiring the project proponent to conduct investigations into the existing wildlife, covering all the concerned habitats and species. At the same time, the requests of the environmental NGOs are also documented in the Stage 1 Public Engagement report.

During Stage 2 Public Engagement which occurred one year later, the CEDD provided a response to the issue, stating that the Recommended Outline Zoning Plan (RODP) would incorporate measures to protect the natural environment and 'features of high ecological value'. The ecological survey and EIA study conducted in parallel are supposed to confirm and detail conservation boundaries.

During the Stage 3 Public Engagement which took place in 2014, the CEDD provided an updated response on the subject. Here, it stated that while ecological surveys were conducted when formulating the land use proposals in the RODP, the proposed zonings (e.g. Conservation Area, Coastal Protection Area and Green Belt) have included appropriate conservation and protection measures, including a proposed River Park. Here, the conservation zoning and the proposed river park are the major outcome and response to the requests of the environmental NGOs, although the original request was to prohibit any civil engineering work in the area. The proposed River Park was later also reflected on in the submitted Project Profile and EIA report in 2015, and as part of the requirements in the Environmental Permits issued in 2016.

Diagram 1 Events and Timeline of Tung Chung New Town Extension Project



**Information from various documents listed in Appendix A.*

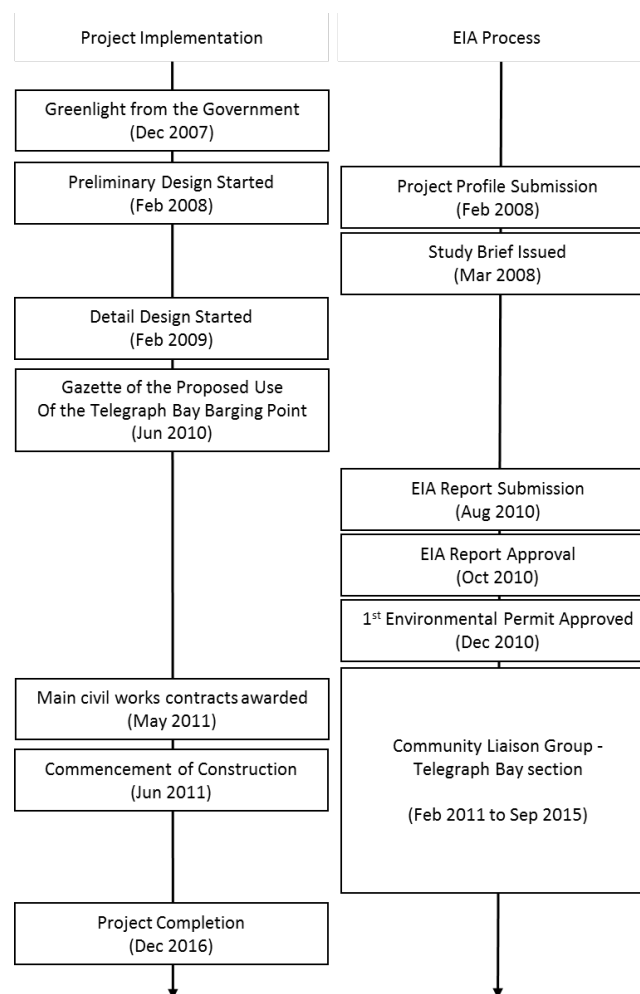
Case 2: Mitigation of nuisance associated with Telegraph Bay Barging point

The South Island Line (East) project is a railway extension project by MTR Corporation Limited. As stated in the EIA report, an existing barging point at Telegraph Bay was proposed for loading of spoil transportation. However, this proposed site was not mentioned in the Project Profile and the EIA Study brief. The first public announcement of the plan happened when it was included in a Gazette in June 2010. The proposal received an immediate objection from the local community. The timeline of the associated major events of the project are shown in **Diagram 2**.

The local community made objections to the proposal of using Telegraph Bay Barging Point for the project. Objections were submitted to the relevant authorities when the work was announced in the government Gazette and during the public inspection of the EIA report. While the objection to using the barging point was dismissed, the Environmental Permit which was issued required MTR Corporation Limited to set up Community Liaison Groups (CLG), comprising representatives from concerned and affected parties. The permit also required MTR Corporation Limited's Construction and Demolition Materials Management Plan to include the results of the outcome of CLG meetings.

During the First CLG meeting, the local community made requests with regards to the minimization of the nuisance caused by the barging activities and the truck traffic induced by the project, including lower emissions trucks, monitoring of contractor performance, and extended enclosures of the barging point. MTR Corporation Limited responded positively to these requests. During the second CLG meeting in Apr 2010, it was announced that specifications would be made for the contractor to use lower emissions trucks, and that a monitoring scheme would be introduced to monitor the route and the speed of trucks. In the fourth CLG meeting in Oct 2011, MTR Corporation Limited confirmed that a full roof with side enclosures would be provided for the barging point.

Diagram 2 Event and Timeline of South Island Line (East) project



**Information from various documents listed in Appendix A.*

Analysis and Discussion

The two cases show that public participation in the EIA process can bring positive environmental outcomes for projects and influence project design. In both cases, EIA findings facilitated the negotiation between the concerned parties and the project proponent. Several observations are made.

Firstly, it takes time to develop environmental queries. Besides the time needed for the preparation of information, subsequently the requests can only be addressed when the project proceeds to a stage at which concrete decisions can be made. In case 1, requests of the environmental NGOs were about restricting the land use of the area with high ecological value. The drafting of the ROPD had only started after the Stage 2 of the Public Engagement, in which the project started to consider the details of the land use in the area, and formulating solutions. It took two years to address the queries. In case 2, the queries were associated with the contractor and site management, which took place after the project proponent obtained the environmental permit and finished the engineering designs of the main works. The queries were addressed one year after the first objection was made. On the other hand, the EIA process does not have a provision to transform or link the environmental queries to project queries. In both cases, it was up to the concerned parties to make the linkages between the two processes.

Secondly, providing for early participation windows is crucial for allowing time for the environmental concerns to build their connections with project implementation, before the corresponding decisions are made. However, in such early windows, requests needed to be made with minimal project and environmental information available. In case 1, the requests were made before the EIA started; in case 2, the EIA did not cover the contractual details of the project. It required stakeholders to have specific knowledge to be able to act before decisions were made. In case 1, the environmental NGOs used in-house survey data to support their queries; in case 2, members of the CLG had a high educational and professional engineering background and were able to understand how the contracting document would work. However, it is not often the case that the concerned party has such high levels of knowledge to act ahead of the project implementation decisions.

The two cases show that public participation can influence project design. However, this ability relies on the concerned parties having the knowledge and determination to link environmental queries to project queries, and an ability to negotiate with the project proponents themselves. It would be worth discussing whether EIA should have a provision to link the environmental queries to project queries on behalf of the stakeholder, and whether EIA should provide interim information to the concerned parties during different project implementation stage, before submission of the EIA report is attempted.

Conclusions

In the paper we examined two EIA cases in Hong Kong with regards to how queries in public participation practice influenced project design, bringing about positive outcomes. Due to the intertwined development of the EIA study and the project engineering stages, the EIA process could help environmental concerns develop into project implementation elements and be incorporated into project designs. However, it took time for developing the connection and also for formulating solutions. Generating information of the concerned subjects takes additional time, and environmental requests can only be addressed when the project is developed in a number of stages. If requests are made early enough, they can effectively influence the project process; however, it requires good knowledge on of subject in order to be able to act ahead of project developments. We suggest that there should be a provision for EIA to connect environmental concerns with project implementation, and to provide interim information for concerned parties in different project implementation stages.

References:

- Glucker, A.N., Driessen, P.P.J., Kolhoff, A. & Runhaar, H. a. C., 2013. Public Participation in Environmental Impact Assessment: Why, Who and How? *Environmental Impact Assessment Review*, 43, pp.104–111.
- Leung, H., Frommer, G. & Chan, S., 2011. Managing Expectation on Major Railway Expansion in Hong Kong. In *IAIA11 Conference Proceedings*.
- Nadeem, O. & Fischer, T.B., 2011. An evaluation framework for effective public participation in EIA in Pakistan. *Environmental Impact Assessment Review*, 31(1), pp.36–47.
- O’Faircheallaigh, C., 2010. Public Participation and Environmental Impact Assessment: Purposes, Implications, and Lessons for Public Policy Making. *Environmental Impact Assessment Review*, 30(1), pp.19–27.

Appendix A Source of Information

Tung Chung New Town Extension

- 1) Project Profile (PP-523/2015, PP-519/2014, PP-470/2012)
- 2) Study Brief Issued or DEP's decision on permission to apply directly for permit (ESB-285/2015, ESB-283/2014, ESB-251/2012)
- 3) EIA report (AEIAR-196/2016)
- 4) Environmental Permits (EP-519/2016)
- 5) Stage 1 Public Engagement Report
- 6) Stage 2 Public Engagement Report
- 7) Stage 3 Public Engagement Report

Item 1 to 4 are accessible on EPD's archive:

http://www.epd.gov.hk/eia/english/alpha/aspd_652.html

Item 5 to 7 are accessible on project website: <http://www.tung-chung.hk/>

South Island Line (East)

- 1) Project Profile (PP-244/2008)
- 2) Study Brief Issued or DEP's decision on permission to apply directly for permit (ESB-181/2008)
- 3) EIA report (AEIAR-155/2010)
- 4) Environmental Permits (No. EP-407/2010, No. EP-407/2010/A, No. EP-407/2010/B, No. EP-407/2010/C, No. EP-407/2010/D, No. EP-407/2010/E, No. EP-407/2010/F)
- 5) Monthly EM&A Report No.1
- 6) Gazette No.3204
- 7) Project Website <http://www.mtr-southislandline.hk/en/home/>
- 8) Community Liaison Group meeting presentation materials and meeting minutes (accessible through Project Website)

Item 1 to 5 are accessible on EPD's archive:

http://www.epd.gov.hk/eia/english/alpha/aspd_542.html

Item 6 is accessible on the Government of Hong Kong Gazette archive

<http://www.gld.gov.hk/egazette/>