

## **CHAPTER 2**

### **POLICY AND LEGISLATION**

#### **2.1 Introduction**

Effective project planning requires proper understanding of policies and legislations relevant to environmental protection and management. A decision on project approval relies on the project's ability to meet all legal requirements (statutory or non-statutory), procedures and the project is in line with national development policies. The project may be of interest to several agencies, directly or indirectly, be it at national, state or local authority level.

#### **2.2 Relevant National Policies and Plans**

Some key national policies and plans are as follows:-

- National Policy on the Environment
- National Policy on Biological Diversity
- National Policy on Climate Change
- National Physical Plan

A complete list of relevant policies is listed in **Appendix 1**. The Project Proponent and consultants are required to ensure that the proposed project is in line with and do not contradict these policies and plans.

##### **2.2.1 National Policy on the Environment**

The National Policy on the Environment (NPE) was formulated in 2002 with the aim of providing policy directions for the protection and sustainable management of the environment. The Policy is based on eight principles which inter-alia are intended to harmonize economic

development goals with environmental protection agenda. A key objective of the Policy is the integration of environmental considerations into planning through the EIA process.

### **2.2.2 National Physical Plan**

Malaysia's Second National Physical Plan (2010 - 2020) provides a long-term strategic framework for national spatial planning and includes measures required to shape the direction and pattern of land use, biodiversity conservation and development in Peninsular Malaysia.

The Physical Plan is a set of guidelines for federal and state governments to control development and land administration. The Physical Plan includes measures to address climate change and conserve natural resources and biological resources in the country, including establishing carbon sinks for sequestration, establishing sustainable forest and water management, and a Central Forest Spine to link key ecological areas in Peninsular Malaysia. The Plan complements the Five-Year Economic Development Plan as it provides the spatial dimension to the sectoral distribution of natural resources in the country.

## **2.3 ENVIRONMENTAL LEGISLATION**

Federal and state laws relating to the environment are as follows:-

### **(a) Federal Legislation**

- (i) Environmental Quality Act, 1974 (Act 127) and its subsidiary

Regulations and Orders – applicable to all states and is administered by the Department of Environment (DOE).

**(b) State Legislation**

- (i) Environment Protection Enactment, 2002 (Enact. 12/2002) – applicable to the State of Sabah and is administered by the Environmental Protection Department (EPD);
- (ii) Natural Resources and Environment Ordinance, 1993 (Chap. 84) – applicable to the State of Sarawak and is administered by the Natural Resources and Environment Board (NREB).

The relevant environmental laws with respect to requirements of EIA are given in **Appendix 2**.

**2.3.1 Federal Legislation**

The Environmental Quality Act (EQA) was formulated in 1974 to prevent, abate, and control pollution and to enhance the environmental quality in Malaysia. Regulations and Orders have been made under the EQA to control and manage various environmental aspects.

The administration of the EQA is entrusted to the Department of Environment (DOE) Malaysia. The DOE, an agency of the Ministry of Natural Resources and the Environment, is the authority established under the EQA and plays a key role in the enforcement of the provisions of the Act and its subsidiary regulations.

Environmental Impact Assessment (EIA) is a statutory requirement for activities which have been prescribed under Section 34A of the EQA. Section 34A(2) of the Act stipulates that any person intending to carry out any of the prescribed

activities is required to conduct an EIA study and submit a report to the Director General of Environment for prior approval.

The main highlights of EIA provisions in the EQA 1974 include:

- Section 34A (1) – The Minister may prescribe any activity which have significant environmental impacts as prescribed activity
- Section 34A (2) – Appointment of qualified person to conduct EIA
- Section 34A (2) (A) – Director General shall maintain a list of qualified persons
- Section 34A (2) (B) – Qualified person shall be responsible for the EIA
- Section 34A (2)(C) – EIA report shall be in accordance with the guidelines
- Section 34A (3) – Director General can approve the EIA report with conditions and inform relevant approving authority
- Section 34A (4) – Director General may not approve the EIA report if not consistent with physical plan or fulfil the guidelines
- Section 34A (5) – Director General can require the submission of additional reports other than the EIA report
- Section 34A (6) – Activity is not to be carried out until EIA report is approved
- Section 34A (7) – Responsibility of the proponent to provide proof of compliance with conditions of approval
- Section 34A (8) – Fine not exceeding five hundred thousand or imprisonment for contravening section 34A
- Section 34AA – Director General may issue prohibition or stop work order

### **2.3.2 State Legislations**

The states of Sabah and Sarawak enacted their own environmental legislations requiring Environmental Impact Assessment for activities which fall within the state jurisdiction. These include activities associated with the exploitation, development and use of land and natural resources including water, soil, minerals, forest, and other resources.

**(a) Sabah Environment Protection Enactment 2002**

Section 12 of the Enactment provides for the Minister to prescribe any development to be a Prescribed Activity for which an EIA or a proposal for mitigation measures is required to be submitted to the Director of the Environment Protection Department (EPD) for approval. The Enactment provides powers to prohibit the execution of any prescribed activity that is in contravention of the regulations. Two subsidiary Orders have since been established to bring into effect the provisions of this Enactment.

The Environment Protection (Prescribed Activities) Order 2005 spells out the 12 groups of prescribed activities. The above Order further categorizes the prescribed activities into First and Second Schedules which differ in the type of EIA Report submission required to be made to the Director of the EPD. Prescribed activities under First Schedule are required to submit a proposal for mitigating measures while prescribed activities under Second Schedule are required to prepare and submit an EIA Report. The Director of the EPD may by a notice in writing to the project proponent to cease a prescribed activity in the event of non-compliance with the conditions of approval issued for the prescribed activity.

**(b) Sarawak's Natural Resources and Environment Ordinance 1993**

The Natural Resources and Environment (Prescribed Activities) Order, 1994 (Sarawak) made under the Natural Resources and Environment Ordinance 1993 stipulates the types of activities which are subjected to an environmental impact assessment. Activities prescribed under the Ordinance are related to the development of natural resources of the State.

The provision of this Ordinance is quite similar to that of the EQA and the Environmental Protection Enactment of Sabah. Section 11A of the

Ordinance confers powers to the NREB by Order, to require any person undertaking a prescribed activity to submit a report on the impact of such activities on the natural resources and environment to the Board for its approval. A unique feature of the Ordinance is the provision for early commencement of preparatory work for the activity or part of it (such as earthworks) prior to the approval of the EIA Report. An Order prescribing the activities requiring an environmental impact assessment was established in 1994.

### **2.3.3 Adherence to DOE Guidelines**

At the stage of EIA Report preparation and all stages of project implementation, the requirements and specifications stipulated in the following Guidelines issued by the DOE shall be adhered to:

- (a) Guidance Document for addressing soil erosion and sediment control aspect in EIA Report as per **Appendix 3**.
- (b) Guidance Document for the preparation and submission of Environmental Management Plan (EMP) as per Chapter 6 of this EIA Guideline.
- (c) Guidance Document for the preparation of the document on land disturbing pollution prevention and mitigation measures (LD-P2M2) as per **Appendix 4**.
- (d) List of Guidelines/Technical Guidance Documents as per **Appendix 5**.
- (e) Other relevant guidelines issued by the DOE pertaining to environmental-related system and management.

- (f) Other documents issued by the DOE from time to time related to EIA process and procedure.