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ACE Paper 18/2009

For information on 9 November 2009

Environmental Impact Assessment Ordinance (Cap. 499)
Environmental Impact Assessment Report
Proposed Development at Fung Lok Wai, Yuen Long

PURPOSE

This paper is to update Members on the status of the Environmental Impact Assessment (EIA) report on “Proposed Development at Fung Lok Wai, Yuen Long at Lot 1457RP in D.D. 123” (hereafter known as the Project). The location of the Project area is shown at **Annex A**.

BACKGROUND

2. The Project is classified as a designated project under Item P1, Schedule II of the EIA Ordinance: “A residential or recreational development, other than New Territories exempted houses within Deep Bay Buffer Zone 1 or 2”.
3. The Project comprises the following key components:
 - (i) a residential development of about 2,860 units taking up about 4 ha (5%) of the Project area;
 - (ii) a Wetland Nature Reserve (WNR) of about 76 ha (95%) to be developed in the rest of the Project area; and
 - (iii) an access road via the existing Fuk Shun Street to be upgraded through improvement works.
4. The EIA report for the Project was discussed at the meetings of the EIA Subcommittee and the full Council on 18 September 2008 and 8 October 2008 respectively. Apart from the conditions to endorse the EIA report as shown in the letter of the Advisory Council on the Environment (ACE) dated 22 October 2008 at

Annex B, the ACE also recommended the Environmental Protection Department (EPD) to follow up with the project proponent, Mutual Luck Investment Limited, to provide an undertaking to ensure that the parent companies of the project proponent would take up the responsibility of the management of the proposed Wetland Nature Reserve (WNR) if the project proponent failed to do so.

LATEST PROGRESS

5. Subsequent to the ACE endorsement of the EIA report with conditions, EPD sought the advice from the Department of Justice and was given the understanding that imposing an "undertaking" or a "parent company guarantee" under the EIA Ordinance (EIAO) is inappropriate.

6. Nevertheless, the Project will require planning permission from the Town Planning Board (TPB). The EIAO does not impose any restrictions on when a project proponent may apply for planning approval. In theory, he can do so prior to, in parallel to, or after the conduct of EIA. For the case in question, the explanatory statements of the relevant Outline Zoning Plan (OZP) do not specify that an environmental impact study to be submitted as part of the planning application must have first been approved by the Director of Environmental Protection (DEP), but it is logical for the project proponent to have obtained DEP's approval of the EIA report first before submitting a planning application. As regards the issue of Environmental Permit (EP), it is logical for the applicant to have obtained a planning permission before applying for an EP.

7. In response to DEP's letter of 4 November 2008 requesting for further information under Section 8(1) of the EIAO, the project proponent submitted recently the further information including a letter of undertaking for the maintenance and management of the WNR on 7 October 2009 (**Annex C**). Under Section 8(3) of the EIAO, it is now for DEP to make a decision on whether to approve the EIA report.

8. In view of the recent legal advice DEP obtained, instead of imposing the project proponent's undertaking of 7 October 2009 as an EP condition and further demanding a "parent company undertaking/guarantee", the project proponent will be requested to assure the TPB on the long-term management arrangements of the WNR at the planning application stage in accordance with the requirements as stated in the relevant OZP and the explanatory statements concerning the "Other Specified Uses (Comprehensive Development and Wetland Enhancement Area)" ["OU(CDWEA)"]. Relevant extract is at **Annex D**.

9. For the WNR, the project proponent will be required to submit a wetland conservation and enhancement scheme, including the detailed design, wetland buffer proposals to mitigate potential impact on the nearby existing wetland, a maintenance and management plan with implementation details, arrangement of funding and monitoring programme and enforcement mechanism to ensure that the long-term management of the WNR is to the satisfaction of the Director of Agriculture,

Fisheries and Conservation (DAFC) or of the TPB.

10. EPD will issue an EP to the Project only after the long-term management arrangements proposed by the project proponent are accepted by DAFC or the TPB.

WAY FORWARD

11. In view of the above, the following steps will be taken:

- (a) approve the EIA report with the appropriate conditions but without putting the "undertaking" from the project proponent (ACE endorsement conditions in **Annex B**) as an approval condition;
- (b) during the planning application stage, for the WNR, the project proponent will, in accordance with the requirements as stated in the relevant OZP and explanatory statements concerning the "OU(CDWEA)" zone, be required to submit a wetland conservation and enhancement scheme, including the detailed design, wetland buffer proposals to mitigate potential impact on the nearby existing wetland, a maintenance and management plan with implementation details, arrangement of funding and monitoring programme and enforcement mechanism to ensure that long-term management of the restored wetland to the satisfaction of the DAFC or of the TPB;
- (c) under the Town Planning Ordinance, Cap. 131, the TPB will, in considering the planning application, take into account the long-term sustainability of the proposed WNR in deciding whether to approve the application, and may impose such conditions of approval as it thinks fit; and
- (d) EPD will issue an EP to the Project only after the long-term management arrangements proposed by the project proponent are accepted by DAFC or the TPB.

Environmental Protection Department
November 2009