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ACE Paper 9/2011

For discussion on 13 June 2011

Arrangements to Implement Conservation and Development Proposals Involving the Priority Sites for Enhanced Conservation

PURPOSE

This paper seeks to inform Members of the arrangements we would pursue to implement the public-private partnership (PPP) scheme. The scheme was promulgated under the New Nature Conservation Policy (NNCP) in 2004.

BACKGROUND

2. Under the NNCP, we identified 12 priority sites of high ecological importance for enhanced conservation, at **Annex**. A substantial portion of these sites is in private ownership. To better protect these sites, we have launched among others, the PPP scheme.

3. Under the PPP scheme, developments of an agreed scale would be allowed at the less ecologically sensitive portions of the priority sites provided that the developer undertakes to conserve and manage the rest of the site that is ecologically more sensitive on a long-term basis. Under the PPP scheme, the Advisory Council on the Environment (ACE) supported the project proposal in respect of Sha Lo Tung from the nature conservation angle. Separately, a development proposal of Fung Lok Wai, which comprises sites in the Ramsar Site and Deep Bay Wetland outside Ramsar Site, which are amongst the 12 priority sites, was taken forward by the developer before the promulgation of the PPP scheme.

PPP SCHEME - DEVELOPMENT PROPOSALS FOR PRIORITY SITES

4. When the ACE considered the Fung Lok Wai and Sha Lo Tung proposals and their Environmental Impact Assessment (EIA)/Environmental Assessment (EA) reports, it had asked the Government to develop necessary mechanism to ensure the ecological mitigation and enhancement measures proposed in their reports would be fully implemented and sustained. To this end, we have drawn up a funding and land management framework as set out below to sustain the long-term management of the ecologically sensitive portions of the priority sites.

Proposed funding arrangement

5. Both the Fung Lok Wai and Sha Lo Tung developers have undertaken in their EIA/EA reports to be fully responsible for the construction, creation, enhancement, maintenance and proper management of the Wetland Nature Reserve/Ecological Reserve proposed in the EIA/EA reports. While the two project proponents have indicated that they are willing to set aside certain funds as seed money to support the long-term conservation of the ecologically sensitive portions, concerns have been raised on how the funding support can be sustained particularly when the developments are completed and sold to small individual owners. Having considered various options including that made by the developers to set up a private trust, we consider that an upfront lump sum donation sufficient to generate recurrent incomes to support the pledged conservation programmes could be made to the Environment and Conservation Fund (ECF), which is established under the ECF Ordinance (Cap. 450) and is under the oversight of the Secretary for the Environment as the trustee. The ECF provides funding for education and research as well as other projects which are related to environmental protection and conservation. As a statutory trust, the ECF has put in place a credible and accountable mechanism for holding the donations by the project proponents. As regards the amount of the upfront donation to the ECF, it will be derived having regard to the estimated expenditure for conserving the ecologically sensitive portion of the site, and the assumed long-term rate of investment return of the ECF. The ECF Investment Committee, whose membership includes experts in the private investment sector and a representative of the Director of Accounting Services, will be invited to review its investment strategies with a view to generating incomes to support the recurrent funding requirements of the conservation programmes as pledged for the specific sites in the long term.

6. To ensure that the conservation works are properly conducted, the developers will be required to identify competent bodies (e.g. green groups) as their conservation agents to manage the ecologically sensitive portions of the concerned sites. The developers should advise their conservation agents to apply for funding support from the ECF for carrying out conservation projects, the details of which should be consistent with that in the approved EIA reports and set out in their ECF applications. Moreover, the conservation agent should demonstrate in the application that members of the public will be allowed access to the ecologically sensitive site under private ownership, for nature appreciation or education purposes, with suitable control such that the ecological features of the site would not be adversely affected. The approved funding will be time-limited but may be renewed, provided that the application continues to meet the applicable criteria of the ECF¹. The ECF Committee will decide on the funding applications having regard to various factors including the performance/capability of the conservation agents, as well as whether the amount of funds applied for is reasonable. In the event that the project proponent could not identify a competent conservation agent, or the ECF Committee disapproves the applications of the conservation agents identified by the project proponents, the Agriculture, Fisheries and Conservation Department (AFCD) will be prepared to identify competent agencies to apply for funding from the ECF, and will take up such work as the conservation agents during the interim period if necessary.

Proposed land arrangement

7. In line with our prevailing policy that there should not be land resumption for nature conservation per se, all private land including the ecologically important parts would remain under private ownership. To provide economic incentives to project proponents to carry out PPP projects, when a project proponent proposes development with suggested conservation measures to be carried out in one of the 12 priority sites, the developer acting in the capacity of the lessee of the private land concerned may apply to the Lands Department for a land exchange involving privately owned land and government land, if available, required and justified for the development portion of the priority site with full market land premium to be paid by the developer for such a land exchange involving only the development

¹ The existing Management Agreement (MA) proposals are first vetted by the Environmental Protection Department and AFCD, and then the ACE Nature Conservation Subcommittee. Upon endorsement by the Subcommittee, the funding applications would be submitted to the ECF Committee for approval. In accordance with the existing arrangement, the funding is time-limited. The MA project proponent would need to apply for funds again when the funding period ends.

portion. In parallel a lease modification² will be executed for the privately owned land within the ecologically sensitive portion of the site, which will remain in the lessee's ownership. In the modified lease for the privately owned land within the conservation portion, alienation would be restricted except as a whole and unless with the prior approval of the Director of Lands to ensure that the land will remain in the ownership of the project proponent. The project proponent as the lessee would also be required to provide unrestricted access to the conservation agents and government departments concerned to carry out conservation management work and inspection respectively.

8. In addition to the 12 priority sites at the **Annex**, there can be other sites that are in private ownership and are considered to have ecological merits as indicated in their respective land use zonings. The above funding and land arrangement could also be extended to cover them though each case would need to be assessed on its merits.

WAY FORWARD

9. Subject to the view of this Council, the relevant authorities shall continue to liaise with the developers of the projects at Sha Lo Tung and Fung Lok Wai on the implementation of the projects having regard to the arrangements set out above.

ADVICE SOUGHT

10. Members are invited to offer views on the above proposals.

Environmental Protection Department
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² The lease will need to be modified, and it may take the form of lease modification or a land exchange involving surrender of the land and regrant of the land even without changing the land boundary.

12 Priority Sites Identified under the New Nature Conservation Policy

Ramsar Site

Sha Lo Tung

Tai Ho

Fung Yuen

Luk Keng Marsh

Mui Tsz Lam and Mau Ping

Wu Kau Tang

Long Valley and Ho Sheung Heung

Deep Bay Wetland outside Ramsar Site

Cheung Sheung

Yung Shue O

Sham Chung