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ACE Paper 10/2007
For advice

Report on the 97th Environmental Impact Assessment Subcommittee Meeting

INTRODUCTION

On 19 March 2007, the Environmental Impact Assessment (EIA) Subcommittee considered the EIA report on Permanent Aviation Fuel Facility (PAFF) for Hong Kong International Airport (see ACE-EIA Paper 3/2007 at **Annex A**).

ADVICE SOUGHT

2. Members are requested to note the views of the Subcommittee and advise whether the EIA report should be endorsed.

VIEWS OF THE SUBCOMMITTEE

3. Members noted that a total of 1,094 numbers of public comments received by the Environmental Protection Department (EPD) had been referred to Members for reference before the meeting. Most of the comments were in the format of standard letters or emails. Separately, two sets of public comments directly addressed to the Council had also been circulated to Members for information before the meeting. One set of comments received on the date of the meeting was tabled for Members' information. The three sets of comments were also addressed or copied to EPD. The public inspection period expired on 24 March 2007. EPD has referred all those comments received after the Subcommittee meeting to all Council Members for reference prior to the ACE meeting on 19 April 2007.

4. Members noted that the EIA report was a revised EIA report and not a fresh submission. They agreed that it was important to take note of the background of the EIA report in examining the revised EIA report. In this connection, Members noted that an EIA report for the project had been discussed at the 72nd meeting of the EIA Subcommittee on 8 July 2002 and endorsed by the ACE on 29 July 2002 with a set of conditions. The EIA report was approved by the Director of Environmental Protection (DEP) and an Environmental Permit (EP) granted under the EIA Ordinance to construct and operate the

project in August 2002. When the Council endorsed the EIA report on the temporary Aviation Fuel Receiving Facility (AFRF) sited off Sha Chau in 1995, one of the conditions was that the construction of the permanent pipeline would be expedited. The project proponent had updated the Council since 1996 on the site search and site selection process to replace the existing temporary AFRF. The Council was briefed of the development and identification of Tuen Mun Area 38 as the preferred site option for the PAFF. After the endorsement of the EIA report on PAFF in 2002, the Council was kept informed of the results of the bubble jacket noise attenuation trial and test which was one of the conditions recommended by the Council and contained in the EP.

5. Subsequently, Shiu Wing Steel Limited lodged a Judicial Review in November 2002 against the DEP's decisions. Both the Court of First Instance and the Court of Appeal ruled in favour of the DEP in September 2003 and March 2005 respectively. On 17 July 2006, the Court of Final Appeal (CFA) overturned the decision of the Court of Appeal and set aside the judgment of the Court of First Instance. It ordered that the two decisions made by the DEP under the EIA Ordinance in August 2002 to approve the EIA report and to grant the EP for the project be quashed.

6. A copy of the judgment of the CFA is enclosed in ACE-EIA Paper 3/2007 at Annex A. Some of the salient points in the CFA judgment are as follows –

- (a) The methodology adopted for making the quantitative risk assessment (QRA) only in respect of a 10% loss of fuel was inconsistent with the requirements of the risk guidelines (paragraph 66 of the judgment). For a QRA to be undertaken regarding the catastrophic instantaneous 100% loss scenario, it would have been necessary not only to assess the frequency of occurrence of the scenario but also – and perhaps primarily – to assess the number of fatalities that might be caused if the scenario occurred (paragraph 68 of the judgment);
- (b) According to paragraph 72 of the CFA judgment, a QRA must be both generic and project specific and the methodology required “*searches for the relevant scenarios in the history of projects of the same genus – and thus identifies scenarios for the purposes of para. (i) [clause 3.3.10.1 of the Study Brief referred in paragraph 55 of the CFA judgment] – then quantifies risk by reference to that history and the specific features of the instant project...*”; and
- (c) According to paragraph 93 of the CFA judgment, “*...it is reasonable to assume that the insertion of an adequate QRA in the existing EIA report would not involve “going back to square one”... Issues other than the QRA for “all hazardous scenarios” have already been addressed, comments have been obtained and evaluated. If, when the required QRA is made, it appears that there is no unacceptable risk to human life, a new approval and environmental permit should follow in little more than the periods specified*

in the Ordinance. But if it then appears that further mitigation measures either must or ought to be taken to eliminate an unacceptable risk to human life, delay to achieve that end is a delay which must be accepted...”.

7. In the light of CFA’s judgment, the project proponent (Airport Authority Hong Kong), submitted a revised EIA report in December 2006 based on the same EIA study brief and applied for approval under the EIA Ordinance. Members agreed that it was important to take note of the major changes of the revised EIA report as compared with the previous EIA report submitted in 2002. Members noted the following major changes –

- (a) Hazard assessment – review of hazard assessment in the revised EIA report, including the QRA of the hazard scenario of 100% instantaneous loss of a tank content, to address the issue raised by the CFA;
- (b) Tank farm design and development – the total capacity of tank farm was reduced from 420,000 m³ to 388,000 m³. The tank height was reduced. Due to some land use changes, the whole site was shifted 10 m away from the building of Shiu Wing Steel Mill. Additional safety features had been added to enhance security and safety, such as changing the outer security walls from wire mesh to impervious walls and equipping the bund with wave wall to enhance its wave protection capability. Moreover, an EcoPark, siting next to PAFF Tank Farm, was added in the revised EIA report as a major additional sensitive receiver;
- (c) Mitigation measures to protect Chinese White Dolphins (CWD) – additional measures were proposed to protect CWD, including the avoidance of dredging in CWD calving season from March to August (on top of avoidance of piling in CWD calving season) and imposition of 250 m CWD exclusion zone for the whole pipeline dredging (instead of only pipeline dredging within the marine park); and
- (d) Approval from relevant authorities – approval had been obtained by the project proponent from relevant authorities for the construction works, including fire services installations, requirements under the Buildings Ordinance and Town Planning Ordinance.

8. Members agreed that –

- (a) it was important to observe the CFA judgment in considering the revised EIA report; and
- (b) the Subcommittee’s recommendation had to take account of the Council’s previous recommendations on the project and strong justifications would be required if deviation was deemed necessary.

9. A summary of the issues discussed by the Subcommittee is at **Annex B**. The Subcommittee agreed to recommend to the Council that the outstanding issue of hazard assessment associated with the tank farm (with further information to be provided by the project proponent) be further discussed.

ADDITIONAL INFORMATION FROM PROJECT PROPONENT

10. The project proponent has provided the following additional information at **Annex C** –

- (a) Part 1A – Overview of issues relating to hazard assessment;
- (b) Part 1B – 100% scenario of instantaneous loss of fuel;
- (c) Part 2 – Comparison of assumptions and basis of hazard assessment in the PAFF EIA report and public comment (Health and Safety Laboratory);
- (d) Part 3A – Responses to the public comments related to hazard assessment; and
- (e) Part 3B – Responses to comments tabled by Shiu Wing Steel Limited at the Tuen Mun District Council meeting on 13 March 2007.