



Ms. WONG Sean Yee, Anissa, JP
Director of Environmental Protection
Environmental Protection Department
27th floor, Southorn Centre, 130 Hennessy Road
Wanchai, Hong Kong
(Email: eiaocomment@epd.gov.hk, dep@epd.gov.hk)

香港觀鳥會
THE
HONG
KONG
BIRD
WATCHING
SOCIETY

國際鳥盟準成員
BirdLife Partner Designate

18 June 2012

Dear Ms. Wong,

Objection to approval of EIA report for Pilot Project for Public - Private Partnership Conservation Scheme, Sha Lo Tung Valley, Tai Po (EIA203/2012)

The Hong Kong Bird Watching Society would like to raise an **OBJECTION** to the approval of the Environmental Impact Assessment (EIA) Report for “Pilot Project for Public - Private Partnership Conservation Scheme, Sha Lo Tung Valley, Tai Po” (EIA203/2012).

We consider that:

- a. The project would introduce adverse impact to the environment that cannot be fully mitigated, but can be fully avoided by developing a site outside the valley –;
- b. The EIA report failed to meet the requirements of the Environmental Impact Assessment Ordinance (EIAO) and its Technical Memorandum (TM) in impact evaluation and mitigation;
- c. The EIA failed to correctly identify a key habitat in the development site
- d. The EIA excluded an important sensitive receiver – pedestrian hikers on the access road
- e. The project is not in line with the New Nature Conservation Policy;
- f. Approval of the project will compromise Hong Kong’s ability to meet its responsibilities under the Convention on Biological Diversity, especially in its failure to respect the avoidance principle, the precautionary principle and endorsement of perverse incentives under the PPP approach.

Our reasons are stated as follows:

1. Adverse Environmental Impacts to ecologically sensitive Sha Lo Tung Valley

- 1.1 The EIA report failed to assess the impact of habitat loss at the development site which is “*a small seasonal stream that is known to contain protected fish species, and is also of high landscape value*”¹. This has not been reflected in the Ecological Impact Assessment. Habitat loss of “*the seasonal stream*” has not been included in the impact evaluation² and that in the Ecological Impact assessment it claimed that the development site consist of primarily a “*Grassland Shrubland Mosaic*”³. The EIA report therefore failed to provide “*comprehensive and accurate information on the ecological baseline*”, “*identification and prediction of potential ecological impacts*”, etc.⁴
- 1.2 Many species of conservation interest in particular bird species have been recorded within the development site. The EIA report has not adopted the principle if the EIAO that “*Potential impacts shall be avoided to the maximum extent practicable such as adopting suitable alternatives (e.g. change of site, design, construction method, alignment, layout, programme, etc.)*”⁵
- 1.3 The project admits that there will be considerable amount of pollutants generated during construction and operation (Section 6.5). As the Sha Lo Tung stream SSSI is at downslope of the proposed development and the buffer is only 20m, all surface runoff would eventually go into the stream. Nevertheless, **No Risk Assessment or a Worse-case Scenario for ecological impact was conducted** by the consultant to assess the impact in case of failures of mitigation measures (e.g. during a typhoon or a severe rainstorm causing malfunction of drainage systems). Given the sensitivity of the Sha Lo Tung Stream SSSI and the valley, the ecosystem can be destroyed with an unexpected failure of the mitigation measures. This can not be handled through the EM&A procedure described.
- 1.4 The ecological impacts of the proposed developments have not been properly and comprehensively addressed. Mitigation measures were also incomprehensive, which does not comply with the EIAO (Refer to Sections below).

¹ 10.8.5 of the EIA report

² 9.9.3 of the EIA report

³ Figure 9.2 of the EIA report

⁴ EIAO-TM, ANNEX 16, part 4

⁵ EIAO-TM, ANNEX 16, 5.4.1

2. **Impacts on Avifauna**

- 2.1 No specific management proposals were suggested for conservation of avifauna, which is an integral part of the biodiversity. According to EIAO-TM Annex 16 Section 5.2.1, “*an ecosystem perspective highlighting the existing key relationships between different species and the surrounding environment shall be adopted*”.
- 2.2 There is also no assessment on the impacts of suggested habitat management measures in the Nature Reserve on birds, though many species of conservation interest were recorded in the proposed nature reserve area.
- 2.3 The reports referred to the Hong Kong Night Bird Survey by HKBWS which showed Sha Lo Tung is one of the best sites for nightbird diversity. However, no specific impact assessment or mitigation measures were suggested for nightbirds. According to section 9.9.2 of the EIA report, “*on-essential lighting will also be switched off in the middle of the night to avoid disturbance to wildlife. Minimal lighting will be expected during the operation of the Multi-Cultural Education Retreat cum Columbarium.*” However, nightbirds were most active near dusk or dawn but much less active in the middle of the night. The light and noise generated from the Complex and traffic, together with the proposed habitat management measures, would have significant impacts on nightbirds but no mitigation measures were suggested.
- 2.4 The EIA report failed to assess secondary impact of the proposed mitigation measures and habitat management of the proposed reserve on bird species of conservation interest. In particular, three individuals of Slaty-legged Crake (*Rallina eurizonoides*) were recorded by the consultant in one night bird survey, showing that the abandoned agricultural land in the proposed Nature Reserve area is an important habitat for this species. Other species of conservation interest include Yellow-breasted Bunting (*Emberiza aureola*) and Large Grass Warbler (Chinese Grassbird, *Graminicola striatus*). The habitat management being proposed in the reserve may have negative impacts on these species but this has not been evaluated in the Report.
- 2.5 Large Grass Warbler is listed under “Near Threatened” in the IUCN red list and is recorded in AFCD's Biodiversity Survey at Sha Lo Tung Priority Site. The population in Hong Kong was suggested to be a separate species Chinese Grassbird (*Graminicola striatus*)⁶. Given the restrictedness in distribution and low number of the Chinese Grassbird, the species deserve a much higher conservation value. The species inhabits grassland and dwarf bamboo¹.

⁶ The Discovery of Chinese Grassbird, available at:
<http://www.hkbws.org.hk/BBS/viewthread.php?tid=12182>

According to the proposed woodland enhancement measures suggested in the Annex A1 of the EIA report, together with natural succession, the species' habitat would be largely destroyed. It should be noted that information on the species is limited and more study on its ecology is needed. It is likely that the EIA report is under-estimating the impact by ignoring the impacts of its habitat management actions.

3. Impact of improvement of Sha Lo Tung Road

- 3.1 The expansion of Sha Lo Tung Road would introduce more pollution and a number of potential threats to the Sha Lo Tung Valley. It will be difficult to control let alone mitigate increased disturbance from cars and increased number of visitors to the core area of Sha Lo Tung, Pat Sin Leng Country Park would hardly be controlled and mitigated. Improved access also encourages development at Sha Lo Tung Valley and along Sha Lo Tung Road, causing enormous impact to the whole area.
- 3.2 The increased traffic will increase the impact of road kill on animals. The EIA report claimed that "*roadkill is unlikely to happen*" because "*throughout the surveys no roadkill was observed*" the traffic would be "*restricted to daytime*"⁷. This is not scientifically sound as the current traffic at Sha Lo Tung Road is very low, and some diurnal species susceptible to roadkill which may not have been recorded during night-time herptofauna surveys.

4. Mitigation measures

- 4.1 Regarding the mitigation measures for landscape and visual impacts, it is doubtful whether the suggested planting scheme can be properly implemented. The location is a windy hilltop where it is difficult for trees to grow properly and is susceptible to damage by typhoons. According to the Study Brief Section 2.1 (ix), "*to investigate the feasibility, practicability, effectiveness and implications of the proposed mitigation measures;*" However in the EIA report there is **no proper assessment of the feasibility, practicability and effectiveness of these mitigation measures to minimize water pollution, landscape and visual impacts while the suggested measures are unlikely to be effective.** Moreover, there is unacceptable visual impact during the time gap (10 years) before the mitigation fully in place.

⁷ 9.9.2 of the EIA report

4.2 The report claims that *“The project proponent has entered mutual agreement with village representatives to divert New Territories Exempted House (NTEH) demand amounting to 160 NTEH sites outside the Sha Lo Tung valley and dedicate all its land (including 236 building lots) for conservation”* (Section 3.3.5). The practicability and credibility of such measures, and whether it is permitted under current policies, is doubtful. Nevertheless, the environmental impacts of *“160 NTEH sites outside Sha Lo Tung valley”* are also not being addressed. According to the EIAO-TM, *“any proposed off-site mitigation measures shall not require further EIA study for their implementation. Their feasibility, constraints, reliability, design and method of construction, time scale, monitoring, management and maintenance shall be confirmed during the EIA study”*⁸.

5. **Control of visitors and environmental impacts**

5.1 The large number of visitors will introduce significant disturbance to the environment and biodiversity in Sha Lo Tung Valley and Pat Sin Leng Country Park. These include noise and waste pollution, damage to soil and vegetation, and disturbance to wildlife simply due to their presence. It is impossible to remove all these impacts by patrolling staff, especially during peak periods as manpower is limited.

5.2 The effectiveness of visitor arrangement measures (Section 3.8.1 of EIA report) is doubtful. Firstly, it is questionable why *“the proposed designs will encourage visitors not to wander into the Ecological Reserve”* and the effectiveness of such a measure is not being assessed. Secondly, **the management organization of the Complex is not empowered to restrict visitors from visiting the Pat Sin Leng Country Park** through the Sha Lo Tung Valley. However, the report claims that *“Visitors will only be allowed to leave the columbarium through the shuttle buses”*. It is doubtful whether the management organization can differentiate visitors of the columbarium from pedestrian visitors to proposed Nature Reserve / Pat Sin Leng Country Park. Moreover, no measures were suggested outside the festive periods. Failure of these measures would cause an enormous number of visitors to the ecologically sensitive areas and would be detrimental to the environment of the priority site this proposal is intended to protect and the Country Park.

⁸ EIAO-TM, ANNEX 16, 5.4.5g

5.3 Thus, **the EIA report fails under EIAO-TM 4.2.1 (g)** which is “*to investigate the feasibility, effectiveness and implications of the proposed mitigation measures*” as no assessment were done regarding the feasibility and effectiveness of the proposed mitigation measures.

5.4 Residual impacts are expected but mitigation or compensation was not suggested by the report.

6. Impacts to recreational hikers

6.1 According to the Study Brief 2.1(ii), (iv) and 3.2.1 (i), The EIA report should “*identify and describe elements of community and environment likely to be affected by the Project; to identify and quantify emission sources and determine the significance of impacts on sensitive receivers and potential affected uses; and potential air and noise impacts on sensitive receivers located within and near the Project site arising from construction and during operation of the Project.*” Recreational hikers walking along Sha Lo Tung Road are not included as a sensitive receiver of air and noise impact by the consultant. Recreational hikers using the trail from Sha Lo Tung Road to Fung Yuen would also be greatly affected, The hundreds of bus journeys required to bring visitors too and from the columbarium will generate considerable amounts of noise and air pollution. The traffic on the steep and winding road would also pose a huge threat to hikers using the road. Recreational hikers walking along Sha Lo Tung Road or nearby are the most direct and closest sensitive receivers but the EIA report **fails to comply with the Study Brief as it fails to identify a significant sensitive receiver (recreational hikers on Sha Lo Tung Road and nearby trail) and quantify the impacts.**

7. Justification for the location of the columbarium

7.1 There is no justification for the Multi-cultural Education Retreat cum Columbarium Complex (the Complex) to be at the top of Sha Lo Tung Road. **As described above, there are a series of significant environmental problems** including impacts caused by traffic, water pollution and other potential threats to the environment. No overriding reasons are provided to justify for the current location.

7.2 Re-locating the Complex to a site outside Sha Lo Tung Valley would solve the above problems as well as reduce costs significantly (e.g. in Sha Lo Tung Road improvement and traffic arrangements). This would also be more accessible by visitors, as well as discouraging them from visiting the nature reserve and introducing disturbances to the reserve. Damage and potential threats to the ecologically important Sha Lo Tung Valley can also be avoided. The cost saved could be used for better ecological management in the Sha Lo Tung Valley. Such an option is thus beneficial to environment, visitors to the columbarium complex, recreational hikers as well as the developer.

7.3 However, **no such alternatives were provided and assessed by the EIA report.** It should be noted that principle of the EIAO (GN2) requires a full exploitation of possible alternatives as well as encouraging a precautionary approach. According to the EIAO-TM Annex 16, “*Potential impacts shall be avoided to the maximum extent practicable such as adopting suitable alternatives (e.g. change of site, etc.)*”. Given the foreseeable impacts and potential threats the proposed development on the location stated in the EIA report, the current proposal have NOT avoided impacts to the maximum extent as a much more environmental friendly option is available. **This does not comply with the requirements of the EIAO and the TM.**

8. **Conclusion**

According to the EIAO-TM, the quality of the current EIA report is unacceptable because:

- i) Adverse environmental impacts have not been avoided to the maximum extent, as more environmental friendly alternatives are available;
- ii) The project would lead to loss of about 20 hectares of natural habitats without suitable mitigation and compensation;
- iii) Identification and descriptions of the potential environmental impacts in the EIA report are not complete and not accurate. For example, impacts on some bird species of conservation interest and impacts on recreational hikers were missing; Most specifically misidentification of the seasonal stream inside the development site renders all associated mitigation measures invalid.
- iv) Various scenarios, such as in case of failure of sewage collection measures, were not addressed in the report, contrary to 4.4.2(g) of EIAO-TM;
- v) The report fails to assess effectiveness of mitigation measures;
- vi) It fails to comply with EIAO, the Technical Memorandum and the Study Brief of the EIA (refer to points above).

The EIA report **SHOULD NOT be approved** as it fails to comply with the EIAO. Serious consideration should be taken given the sensitivity of Sha Lo Tung, and as a pilot PPP project it should not set a bad precedent for future. **Approving the EIA report would put the environmentally sensitive Sha Lo Tung Valley and surrounding Pat Sin Leng Country Park at risk**, in the sight of its foreseeable adverse environmental impacts and the threats introduced by the proposed project. The EPD and ACE are also respectfully reminded that **accepting a project that would cause adverse environmental problems would result in a failure under the Convention of Biological Diversity (CBD)**, which was extended to the HKSAR in 2011. The project is **against the Aichi Biodiversity Targets set in latest strategic plan 2011-2020 of the convention**, which states that *“incentives, including subsidies, harmful to biodiversity are eliminated, phased out or reformed in order to minimize or avoid negative impacts”* and *“the rate of loss of all natural habitats, including forests, is at least halved and where feasible brought close to zero, and degradation and fragmentation is significantly reduced.”*⁹

The Chief-executive elect in his manifesto has promised to review the New Nature Conservation Policy according to the CBD. Approval of the report and the project would therefore impede Hong Kong from meeting the global biodiversity conservation targets and would set as an unwelcomed precedent for our future nature conservation policy.

Thus, the HKBWS respectfully requests the Director of Environmental Protection to **REJECT** the captioned EIA report with our comments seriously considered.

Yours sincerely,

Cheng Nok Ming
Conservation Officer
Hong Kong Bird Watching Society

⁹ <http://www.cbd.int/sp/targets/>