

LCQ2: Impact on various railway projects due to recent court judgement on environmental impact assessment

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Following is a question by the Hon Starry Lee and a reply by the Secretary for Transport and Housing, Ms Eva Cheng, in the Legislative Council today (May 18):

Although works of the Hong Kong-Zhuhai-Macao Bridge (HZMB) Main Bridge have already commenced, the High Court ruled last month that the environmental impact assessment (EIA) reports on the works of that project to be undertaken within Hong Kong did not comply with statutory requirements, and requested that the environmental permit for such works be withdrawn by the Director of Environmental Protection. It has been reported that the judgement which has recommended new EIA criteria, including the requirements that a baseline study be carried out and corresponding mitigation measures be implemented, has far-reaching implications. It has also been reported that the incident has caused a knock-on effect as the MTR Corporation Limited has already taken the initiative to withdraw three EIA reports on the Shatin to Central Link (SCL) project, and a number of infrastructure projects the EIA reports of which have been approved but the projects have not yet commenced (including the South Island Line (East) (SIL(E)) and the Kwun Tong Line Extension (KTE) might also be affected. In this connection, will the Government inform this Council whether the Government will refer to the aforesaid court judgement and carry out baseline studies on those infrastructure projects and implement corresponding mitigation measures in order to prevent the relevant EIA reports on SCL, SIL(E) and KTE from being challenged; if it will, of the details and the estimated extent of the delay caused to various projects; whether the dates of commissioning have to be postponed and whether the costs of the projects will increase; if it will not carry out such studies and implement such measures, the reasons for that?

Reply:

President,

On April 18 this year, the High Court handed down its judgement on the judicial review (JR) case regarding the environmental impact assessment reports (the EIA Reports) of the Hong Kong-Zhuhai-Macao Bridge Hong Kong Link Road and Hong Kong Boundary Crossing Facilities projects (the HZMB local projects). We

noted that of the seven contentions raised in the JR application, the Court rejected six of them. However, the judgement pointed out that after interpreting the purpose of the "Environmental Impact Assessment Ordinance" ("Ordinance"), it was considered that the EIA Reports of the HZMB local projects had only assessed the cumulative environmental impacts caused by the projects with the projects in place, and had failed to assess the direct impact of the projects on the environment ("stand alone analysis"), as well as the relevant mitigation measures, in order to enable the Environmental Protection Department (EPD) to consider whether the impact has been minimised. The Court therefore ruled in favour of the JR applicant, and the EIA reports and environmental permits of the Hong Kong Link Road and the Hong Kong Boundary Crossing Facilities projects were also quashed.

Taking this opportunity, I would like to point out that we have always conducted environmental impact assessments (EIAs) in a careful and serious manner, and the EIAs of the HZMB local projects are no exception. Since the implementation of the "Ordinance", our understanding regarding the requirements and standards of the "Ordinance" has been that whether the estimated cumulative effects of the projects concerned on the environment as a whole after their completion would comply with the statutory environmental standards should be the basis of approval. We have all along carried out the EIA studies concerned in accordance with the "Ordinance", the Technical Memorandum on Environmental Impact Assessment Process (Technical Memorandum) as well as the Study Briefs issued for the projects concerned that were finalised after public consultation. We have also been submitting the relevant EIA reports to the Director of Environmental Protection (DEP) in accordance with the "Ordinance". As a matter of fact, as a project proponent, our understanding is that there is no explicit requirement under the "Ordinance" or the Technical Memorandum for the provision of such "stand alone analysis" as required in the court's judgement in EIA reports. Hence, we have not included such analysis in the EIA reports submitted. As regards the requirement for the project proponents to introduce mitigation measures as far as possible, it has always been the Government's objective in overall planning and environmental protection. Although we have not provided such "stand alone analysis" as required in court's judgement in the EIA reports of the HZMB local projects, appropriate and feasible mitigation measures have all along been proposed in respect of the impacts of the projects on the environment so as to address the public's concern as far as possible. In addition, every step of the process in respect of all applications under the "Ordinance" is displayed on the EPD website publicly, so as to facilitate the involvement of the public and the Advisory Council on the Environment in different stages. The EIAs of the HZMB local projects were also carried out

under such open and transparent process.

The judgement in respect of the JR on the EIA reports of the HZMB local projects may affect other projects for which EIA is under way. As far as railway projects are concerned, the most affected one is the Shatin to Central Link (SCL). The MTR Corporation Limited (MTRCL), erring on the side of caution, decided on April 21 this year to withdraw three EIA reports of the SCL that have already been submitted to the EPD for consideration, so as to review the contents of the reports.

Since the High Court's judgement involves important legal viewpoints of the "Ordinance" and poses significant implications on the execution of the "Ordinance", after seeking legal advice and considering and examining relevant factors thoroughly, EPD decided to lodge an appeal against the judgement. However, as the appeal process takes time, in order to continue to take forward the SCL project, in parallel with the appeal lodged by DEP, we will review the project's EIA reports and EIA work, and prepare and submit the reports in line with the court's judgement and the procedures, with a view to commencing the construction works of the project as soon as possible. The review and preparation of the EIA reports of the SCL will bring uncertainties to the implementation timetable for the project.

The SCL is a strategic railway project in Hong Kong. The completion of the railway can significantly save passengers' travel time between Kowloon East, New Territories East and Hong Kong Island, relieve the crowded situation of the existing railway lines in urban Kowloon and on Hong Kong Island, reduce traffic congestion and environmental problems of the existing road network, and promote redevelopment of some old districts such as To Kwa Wan and Kowloon City. As the 17 kilometres long SCL runs across a number of densely populated areas in the territory, including Sha Tin, Wong Tai Sin, Kowloon City, Wan Chai and Central, its construction and operation will bring about a change of environment in these areas, and the associated environmental impact must be carefully evaluated. The MTRCL has completed the three EIA reports of SCL, and submitted them to EPD as early as February 21. But in view of the court's judgement on the EIA reports of the HZMB local projects, the MTRCL, erring on the side of caution, decided to withdraw the three EIA reports on April 21 this year so as to review the contents of the reports.

Since the Executive Council agreed to proceed with the implementation of the SCL in 2008, we started to conduct comprehensive and detailed public consultation. The different level of councils, organisations and residents consulted generally

supported and welcomed the SCL project, and urged the Government to expedite its implementation. In end November 2010, the SCL project was gazetted under the Railways Ordinance. We are currently in the statutory consultation stage. We have sought funding from the Legislative Council for a number of advance works and protection works of the SCL project in 2010 and 2011. These advance works and protection works have commenced.

The detailed design work of the SCL railway project has originally been making good progress. The relevant EIA reports had in fact been completed and submitted to EPD. The 17 kilometres long SCL runs from Tai Wai to Kowloon via some densely populated areas, and then from Hung Hom Station via Victoria Harbour to terminate at Admiralty. The MTRCL will make appropriate environmental mitigation measures for the design and construction sequences of the SCL taking into account the environment of the areas along different parts of the SCL. As such, the EIA and the mitigation measures of different sections of the project are contained in three different EIA reports. The first report covers the Tai Wai to Hung Hom section, the second report covers the section from Mong Kok East to Hung Hom, the third report covers the Hung Hom to Admiralty section. As the environmental issues involved are complex and affect a number of areas, each of the three EIA reports took a year to prepare and compile.

Our original plan was to complete the statutory consultation process and statutory EIA process in early 2012, and then to submit the case to the Executive Council for consideration of authorisation to take forward the project. We aim to commence construction works in 2012, and complete the Tai Wai to Hung Hom section in 2018 and the Hung Hom to Admiralty section in 2020. However, as we need to review the three EIA reports of the SCL project in accordance with the court's judgement regarding the EIA reports of the HZMB local projects, there are still considerable uncertainties at this stage as to whether the programme for the SCL project may be affected.

At this stage, it is difficult to estimate the time required for the review of the three EIA reports of the SCL. We and the MTRCL are carefully examining the new EIA requirements laid down in the court's judgement regarding the HZMB local projects and how to meet such requirements in the EIA process. We need to discuss with the EPD the views in this regard. It is only after having a clear understanding of how to handle the requirements of the judgement could we assess how to deal with the three affected EIA reports of the SCL, and the complexity of and time required for

the work. We would then be in a better position to assess whether there will be any delay in the SCL programme.

We expect that the more complex is the EIA work for the affected projects, the longer will be the time required for the review of the EIA report. The more mature is the project preparation work, the closer is the originally scheduled time for commencement of construction, and the time available for review of the EIA report will be shorter and the risk of delay in construction is higher. As far as the SCL is concerned, despite complexity of the EIA work, the EIA work as well as other preparatory work have been making good progress. Our original plan is to complete the statutory consultation process and statutory EIA process in early next year, and then submit the railway scheme to the Executive Council for consideration of authorisation with a view to commencing construction works in 2012. If the review and preparation of the EIA reports are timing consuming and we cannot complete the work within this year, then the original programme may also be affected.

If the programme of the SCL is delayed, it is expected that construction cost will likely increase, but it is difficult to assess the magnitude of the increase in construction cost at this stage.

As regards the environmental permit for the Kwun Tong Line Extension and South Island Line (East) projects, the DEP issued the permits for these two projects in September 2010 and December 2010 respectively. In the JR case in respect of the HZMB local projects, the court's judgement was only in respect of the EIA reports and environmental permits of the HZMB local projects, and did not touch on these two railway projects. We consider that the EIA reports and environmental permits of the two railway projects are still valid and effective. The current design of the South Island Line (East) and the Kwun Tong Line Extension railway already includes various mitigation measures which were made in response to the public's demand to further reduce the impact on the environment. The residents in Kowloon City, Hung Hom and Southern District has longed for the early implementation of the Kwun Tong Line Extension and the South Island Line (East) projects. The relevant District Councils have also been urging the Administration for the early implementation of these two railway projects.

We have sought the Executive Council's authorisation of the Kwun Tong Line Extension and South Island Line (East) railway scheme in November last year. Furthermore, on April 15 this year, the Finance Committee of the Legislative Council

approved the funding applications for the Essential Project Infrastructure Works of the two railway projects. The Executive Council has also approved the financial arrangements concerned. As the EIA reports and environmental permits of the two projects are valid and effective, and we have already completed the necessary statutory, administrative and funding application procedures for these two railway projects, the MTRCL will commence construction works as scheduled, in response to the aspirations of society.

The Administration has always conducted EIAs in a careful and serious manner, and also strives to start construction of railway projects as soon as possible to meet the needs of the community. Although the EIA work for the SCL project faces many uncertainties at this stage, we will try our best to handle the EIA of the SCL project in line with the court's judgement and the procedures, striving to reduce the possible impacts on the cost and programme of the project.

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