

AECOM

Cracow, 25th February 2020

Our reference:

POPDOW/KR/60549311/20/0427



33-100 Tarnów

Contract no. 5.2 Design and Construction Supervision. Project Management, Technical Assistance and Training Technical Support for the Project and Strengthening of PIO's Institutional Capacity

Concerning: Answers to the questions sent by e-mail concerning the Land Acquisition and Resettlement Action Plan for the Works Contract 3D.2/1 Construction of the right embankment of the Biała River in the City of Tarnów.

Dear Sir,

acting under the authority of the State Water Holding Polish Waters Regional Water Management Authority in Cracow (hereinafter referred to as: PGW WP RZGW Cracow), as the Technical Assistance Consultant (hereinafter: Consultant), in agreement with our principal, we have prepared and send answers to the questions, which you formulated in *the Question Form* sent by e-mail on 06.02.2020 to the e-mail address of the Project Implementation Office operating within the structures of PGW WP RZGW Cracow.

Re. 1 A **draft document**, presented at the meeting on 06.02.2020, entitled "Land Acquisition and Resettlement Action Plan for the Works Contract 3D.2/1 Construction of the right embankment of the Biała River in the City of Tarnów" (hereinafter: LA&RAP) was developed in accordance with the World Bank's Operational Policy OP 4.12, i.e. the international financing institution which granted a loan to the Polish Government to finance tasks in the area of flood protection implemented under *the Odra-Vistula Flood Management Project (hereinafter: OVFMP)*. Such a document is drawn up in accordance with the Bank's guidelines and has the

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status of a **draft**, and after public consultations and taking into account the comments made by Project affected persons, its **final version** is elaborated. The vocabulary used results from the requirements of this institution.

Such a document is not formally enforceable in Polish law.

While fulfilling your expectations articulated at the meeting on 06.02.2020, we would like to inform you that the Operational Policy OP 4.12 referred to in the draft LA&RAP is an official document of the World Bank and this document, in English, is available on the website of this institution, at the following address:

<https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=1584&ver=current>.

We would also like to point out that the implementation (for the purpose of the OVFM Project) of the provisions of the World Bank's directional document, i.e. the above-mentioned Operational Policy OP 4.12, is included in the *Resettlement Policy Framework* available at the following address:

http://odrapcu2019.odrapcu.pl/doc/OVFMP/Ramowy_dokument_dotyczacy_Przesiedlen_i_Pozyskiwania_Nieruchomosci.pdf

This is a document in Polish, which had been prepared for the entire OVFM Project before the loan agreement was signed. This document was subject to control by the Bank for compliance with the said Operational Policy and was approved by this institution for use in the execution of each Works Contract, including the Works Contract 3D.2/1 *Construction of the right embankment of the Biala River in the City of Tarnów* in the form of the "No objection" clause.

Re. 2 Succession, i.e. taking over the rights and obligations of the existing bodies by the State Water Holding Polish Waters, is stipulated in art. 526 and subsequent articles of the Water Law act of July 20, 2017 (i.e. Journal of Laws of 2018, item 2268 as amended):

(...) Art. 526. Upon entry into force of the act, the Polish Waters performs the tasks of the hitherto President of the National Water Management Authority, of the hitherto regional directors of water management authorities and of province marshals related to water management and to the State

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Treasury's other assets connected with water management and water management investments.
(...)

Here, we draw particular attention to Article 536 which states that as of the date of entry into force of the Water Law Act, i.e. January 1, 2018, PGW Polish Waters becomes a party to agreements concerning investment projects on public waters owned by the State Treasury and basic water amelioration facilities, including agreements financed or co-financed from funds referred to in Article 5(1)(2), (3) and (4)(d) of the Act on Public Finance of August 27, 2009 (clause 4(d) of the said Article - loans and credits received, applies to us), implemented so far by regional water management boards, provinces, province marshals or relevant provincial organisational units and will complete the implementation of projects based on these agreements and these decisions. To sum up, PGW Polish Waters is therefore obliged to fulfil the obligations arising from previously concluded agreements (here: World Bank Loan). As of the date of entry into force of the above-mentioned Act, PGW Polish Waters is also obliged to fulfil the provisions resulting from the decisions on investment projects carried out on public waters owned by the State Treasury and basic water amelioration facilities (here: decision no. 01/2017 of the Małopolskie Governor on investment implementation consent for the investment project entitled *Construction of the Right Embankment of the Biała River at local km 0+000 – 0+695 (in the register km 5+046 – 6+186 of the Biała River) in the city of Tarnów, the municipality of Tarnów, the district of Tarnów, the Małopolskie Province*, for the task entitled: *Expansion of flood embankments and construction of the right embankment of the Biała River in the Municipality of Tuchów, Tarnów, City of Tarnów* of 31.08.2017, ref. WI-IX.7840.1.1.2017), so far carried out by relevant provincial organisational units, i.e. in this case the Małopolskie Board of Amelioration and Water Structures in Cracow.

Re. 3 PGW Polish Waters, as a rule, took over the rights and obligations of the existing investor as of January 1, 2018.

As already indicated at the meeting held on February 6, 2020, institutional changes took place in 2017/2018 (the legal basis for these changes was indicated in reply to question 2). Decision no. 01/2017 of the Małopolskie Governor on investment implementation consent for the investment project entitled: *Construction of the Right Embankment of the Biała River at local km 0+000 – 0+695 (in the register km 5+046 – 6+186 of the Biała River) in the city of Tarnów, the Municipality*

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of Tarnów, the district of Tarnów, the Małopolskie Province, for the task entitled: *Expansion of flood embankments and construction of the right embankment of the Biała River in the Municipality of Tuchów, Tarnów, City of Tarnów*, ref. WI-IX.7840.1.1.2017 was issued on August 31, 2017 and became final on October 13, 2017, i.e. **79 days before the date of liquidation of the entity**, which was awarded the decision in question (here: Małopolskie Board of Amelioration and Water Structures in Cracow).

Re. 4 No, an administrative decision cannot be issued again in the same case/for the same project. In such a case, the latter decision would be affected by a defect of invalidity and would be subject to be considered as invalid. Vide Article 156(1)(3) of the Code of Administrative Procedure, i.e. this re-issued decision would concern a case already decided by another final decision (Latin *Res iudicata* – a matter already judged).

(...) Art.156.§1. A public authority shall state the invalidity of the decision which:

(...) 3) concerns a case already decided upon by another final decision or a case that has been tacitly resolved; (...)'.

The two-month period stipulated in Article 20(2) of the Special Flood Act is provided for the amount of compensation to be agreed between the existing owner or user and the investor. This is not a time limit envisaged for the case and is not subject to reinstatement. Due to the ineffective expiry of this time limit, the compensation is determined by an administrative decision of the Governor. However, there is nothing to prevent the parties from concluding an administrative settlement before the Governor, in which they will determine the amount of compensation.

Re. 5 Liquidation of allotment gardens "under the embankment" and allotment gardens "in the embanked area" (the embankment and the embanked area will be new elements of land development) are subject to two separate legal regulations.

The allotment gardens under the embankment will be removed due to the fact that they are located in the lines separating the investment area (this area is covered by permanent occupation - for the construction of the planned section of the embankment with facilities related to it

functionally, as described in detail in chapter 1.2 of the draft LA&RAP document). In the case of this area, the State Treasury acquired ownership of the area under the foot of the embankment as soon as the decision on Investment implementation consent (hereinafter: IPIP decision) became final. The procedure for establishing and paying the compensation in relation to these properties is described in detail in the draft LA&RAP document in chapter 4.3.

The land in the embanked area was not taken over by the State Treasury, it is still the property of the Tarnów Municipality, but according to the decision of the Małopolskie Governor no. 01/2017 of August 31, 2017, ref. WI-IX.7840.1.1.2017 on the investment implementation consent, it follows that all the structures and existing utility networks located in the proposed embanked area are to be demolished and the allotment gardens are to be liquidated. Such a measure is legally binding under Article 88l of the Water Law act of July 18, 2001 (this act was in force at the time when the IPIP decision was issued) "on areas with a special flood hazard it is prohibited to perform works and activities hindering flood protection or increasing the flood hazard, including:

- 1) to execute water structures and construct other building structures, except for cycling paths;
- 2) to plant trees or bushes, except for wicker plantations for the purpose of controlling watercourses and plants forming part of biological structure of river valleys or such intended for reinforcing banks, embankments or excavations;
- 3) to change land profile, to store materials and carry out other works, except for works related to the control or maintenance of water and sea shore, related to construction, reconstruction or renovation of a cycling path, as well as maintenance, reconstruction, expansion and rebuilding of flood protection embankments together with the functionally related structures and activities related to delineating a pedestrian or bike tourist route".

The above provision was sanctioning statutorily the ban on building in the embanked area (here: the necessity to liquidate existing plantings and building structures in the newly created embanked area).

In addition, the provision of the IPIP decision was based on the directions contained in the Regulation of the Council of Ministers of October 18, 2016 on the adoption of the Flood Risk Management Plan for the Odra river basin (hereinafter: FRMP), which reads "areas at particular risk of flooding must remain undeveloped".



Pursuant also to the Water Law act in force since January 1 2018, under Article 16(34)(c), the areas between the bankline and the flood protection embankment are areas of particular flood risk. Thus, the ban arising from FRMP remains valid.

Considering the different procedures of liquidating the allotment gardens "under the embankment" and "in the embanked area", the rules of compensation payment for these areas were separated in the draft LA&RAP document. Detailed information on the procedure of compensation payment, as well as persons entitled to receive them, is provided in the draft LA&RAP document in chapters 4.3.2, 4.6.2 and 7 respectively.

Re. 6 We cannot give you the exact number of gardeners who have familiarised themselves with the draft document "Land Acquisition and Resettlement Action Plan for the Works Contract 3D.2/1 Construction of the right embankment of the Biała River in the City of Tarnów", as the materials were made public for viewing both in paper and electronic form. All interested parties could get acquainted with the Draft Plan from 15.01.2020 to 05.02.2020 (inclusively) at the office of:

- State Water Holding Polish Waters Regional Water Management Authority in Cracow, Project Implementation Office, ul. Marsz. Józefa Piłsudskiego, 31-109 Cracow, at working days from 9:00 a.m. to 2 p.m.,
- Water Supervision in Tarnów, ul. Ostrogskich 5, 33-100 Tarnów, at working days from 7:30 am to 3:30 pm,
- at the OVFM Project Office, AECOM Polska Sp. z o.o., Al. Pokoju 1 (building K1), 31-548 Cracow, at working days from 7:30 am to 3:30 pm.

or through websites of: PGW WP RZGW Cracow, City Office of Tarnów, Polish Allotment Federation, Małopolskie Region in Cracow and the Project Coordination Unit. It was noted that this document was downloaded from the above-mentioned websites where it was made available, but we have no way of identifying whether the persons downloading the materials were gardeners.

The same communication channels (without the website and Facebook of PAF) were used to notify interested parties about the public consultation of the draft Environmental Management Plan for this 3D.2/1 Works Contract. The attendance at this meeting, which took place on

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21.08.2019 in the same place (here: the Mirror Room of the Tarnów City Office) was much higher, which confirmed the effectiveness of this form of notifying the local community about the meetings.

In addition, it should be pointed out that during this meeting the participants were also informed that another meeting related to the Works Contract in question would be held independently, dedicated to issues related to compensation payments and the issue of replacement property, as this topic was raised several times during the discussion. As regards the planned consultations of the draft LA&RAP document, an additional communication channel was included, i.e. the website and Facebook of the PAF of the Małopolskie Region in Cracow, i.e. an information channel addressed directly to gardeners, where information on matters relevant to garden allotment users is posted.

Re. 7 The meeting was open to all persons who wanted to participate in it. Not only gardeners, but also the residents of the city of Tarnów and entities involved in its implementation. Attempts were made to inform the widest possible group of people about the date and place of the meeting using commonly accepted media: by publishing an announcement in the local press, on the websites of institutions involved in Project implementation, on notice boards of these institutions, as well as by posting notices on notice boards in places where works are carried out, including FAG Semafor, and with courtesy of the President of the Regional Management Board of PAF, at all other allotment gardens in the city of Tarnów. Invitations were also sent to public institutions, including the Council of Housing Estate no. 7, which will be protected from flooding by the implementation of the Biała River embankment or to the management board of the Tarnovia Gallery. However, in connection with your complaint, an invitation to this meeting was also sent to you individually.

Issues relating to the provision of information on planned meetings to those concerned are also described in the answer to question 6.

Re. 8 Talks on the replacement site were conducted with the Małopolskie Regional Management Board of PAF (with the participation of the Management Board of FAG Semafor), i.e. the institution appointed to represent and defend the interests of its members in accordance with the

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provisions of the Status of the Polish Allotment Federation. The Consultant can confirm that such internal consultations with gardeners have been planned because it took part in the meeting between the President of Regional Management Board of the PAF and the Management Board of FAG Semafor, during which arrangements related to the organisation of such consultations were conducted.

At the same time, it should be noted that the Consultant itself also conducted such consultations in the form of individual talks with gardeners in November 2019. This issue is described in more detail in the answer to question 17.

Re. 9 The purpose of the two-month period specified in the special flood act in art. 20(2) is to agree on the amount of compensation for the properties acquired between the parties without issuing administrative acts. If the parties do not agree on the amount of compensation, then the Governor, as the competent authority, shall determine the amount of compensation by issuing an administrative decision.

Compensation will always be due.

As informed at the meeting held on February 6, 2020, an application to the Małopolskie Governor to determine the amount of compensation for allotment gardens located "under the embankment" was submitted on 05.02.2020. It concerns the allotment gardens for which PAF had the right of use.

In the case of the allotment garden no. 731, which is located in the area without the PAF's right of use, an application for signing an administrative settlement enabling the payment of compensation to gardeners was submitted to the Małopolskie Governor on 21.02.2020. (this matter is described in more detail in reply to question 24).

With regard to the replacement property, it is a fact that pursuant to Article 18(2)(1) of the Act of December 13, 2013 on family allotment gardens (i.e. Journal of Laws of 2017, item 2176), the entity liquidating, similarly as in Article 21(10)(3) of the special flood act, is obliged to provide a replacement property. However, the right to obtain a replacement property is not an absolute right. If such an equivalent property cannot be obtained, the possibility of paying a cash

equivalent should be considered as compensation for the lost right. This thesis is confirmed by the ruling of the Provincial Administrative Court in Cracow of January 29, 2019, file no. II SA/Kr 1316/18. As the Court noted, the obligation laid down in the above-mentioned provisions concerns the provision of replacement land for the “restoration of the family allotment garden”. A family allotment garden has its own normative meaning (a separate area or areas intended for the purpose of family allotment gardens, consisting of plots and a general area, used by gardeners for joint use, equipped with garden infrastructure), which means that this provision does not sanction the obligation to grant any replacement property, but one that is to be used for the “restoration” of the allotment garden.

In such a case, it will always be necessary, in the first place, for the authority to examine whether it is possible to grant such replacement land (replacement properties), which will allow for extending the already existing family allotment gardens, and in particular for restoring those plots which have been liquidated or reduced. If the replacement land is not suitable for restoring the allotment garden for some reason, the possibility of paying the compensation in the form of a cash equivalent remains to be considered.

Re. 10 In reply to this question, we explain that under Article 21(1) of the special flood act, compensation is determined (...) at the value as of the day on which the amount of compensation is determined (...), therefore, owing to this rule, a person entitled to compensation obtains compensation in a real amount corresponding to the value of the lost property on the day of determining the compensation. Therefore, a possibly protracted proceeding/procedure has no negative impact on the amount of compensation for lost assets.

It should be emphasised that although the property was expropriated on 13.10.2017, the gardeners still use the gardens and such a state will continue until the date of paying the compensation (see draft LA&RAP document, a mitigating measure point 3.4, second hyphen, p. 30).

Re. 11 The purpose of the two-month period specified in the special flood act in art. 20(2) is to agree on the amount of compensation for the properties acquired between the parties without issuing administrative acts. If the parties do not agree on the amount of compensation, then the



Governor, as the authority, shall determine the amount of compensation by issuing an administrative decision. As indicated in the answer to question 9, compensation will always be due. Omission of the stage of arrangements does not affect the validity of the Governor's decision establishing the amount of compensation for the property taken over. It also does not close the way for the party to take advantage of the further appeal process, in case of dissatisfaction with the amount of compensation indicated in the Governor's decision.

The protocol mentioned in the question concerns the physical inventory and contains an inventory of the components located in the allotment garden. Based on this inventory-taking, plantings and other assets located within the allotment garden will be valued in the form of a valuation report. An inventory protocol will be attached to the valuation report.

However, attached to this letter we send copies of the inventory protocols, which were prepared on 15.11.2019. (respectively, the protocol on the inventory-taking of the entire allotment garden and the protocol on the part of the allotment garden which is located on the property 1/35).

Re. 12 The map presented at the meeting is the "Map of flooding range in the investment area with a base flow with occurrence probability of 1.0% (once every 100 years) - a non-investment and investment scenario". The Biała River embankment was designed for such probability of flows in accordance with the requirements of the Regulation of the Minister of the Environment of April 20, 2007 on technical requirements to be met by hydraulic structures and their location (Journal of Laws of 2007, no. 86 item 57).

The source of data on the flooding range boundary is the national ISOK system, i.e. the "Information System for Protection of Poland" (more information on the website <https://wody.isok.gov.pl>).

The planned flood protection system encompasses, in addition to the construction of a new section of the Biała River embankment, the extension/reconstruction of the existing embankments of the river, which is planned under another Works Contract also planned for implementation under the OVFMP. This will allow for comprehensive flood protection of areas of the city of Tarnów located in the Biała River basin.



Re. 13 The main objective of the Works Contract 3D.2/1 is primarily to provide flood protection for this part of the city of Tarnów. The contract is implemented as part of *the Odra-Vistula Flood Management Project, Component 3 Flood - Protection of the Upper Vistula, Subcomponent 3D - Passive and active protection in San basin*, whose overriding objective is to enhance protection against flood for people living in selected areas of the Odra and the Upper Vistula river basins and to strengthen the institutional capacity of the public administration to ensure more effective protection against summer floods and winter floods and flash floods. Additional flood-protected areas will be created in the area of the city of Tarnów as a result of the investment, allowing for the City's development, however, their use and possible further development is not the subject of the aforementioned investment.

Re. 14 The draft LA&RAP document contains true provisions, according to the actual state of affairs, such payments are planned, a relevant application to the Małopolskie Governor to determine the amount of compensation for allotment gardens located under the foot of the embankment planned for construction was submitted on 05.02.2020. Article 20(2) of the Act of July 8, 2010 on special rules of preparation for the implementation of investments in the field of flood protection structures (Journal of Laws No. of 201, item 933) applies to these activities.

As indicated at the meeting of February 6, 2020 and in response to previous questions, the Water Law act of July 20, 2017 had entered into force on January 1, 2018, which changed, inter alia, the existing structure of authorities and rules of water management. The new regulations were adopted primarily to fully implement the Water Framework Directive into Polish law. In place of the existing structure of government administration, which was the National Water Management Authority and its subordinate regional water management authorities, as territorial units, and the Provincial Boards of Amelioration and Water Structures, located in the local government structure, the State Water Holding Polish Waters was established, which will manage in a comprehensive manner all broadly understood issues related to water resources in Poland.

The Polish Waters is currently composed of the following organisational units: National Water Management Authority with its seat in Warsaw, regional water management authorities, drainage basin administrations and water supervision units. Specific competences and tasks have been assigned to these organisational units and bodies separated within the PGW ND structure. The PIO, which until 31.12.2017 operated within the Małopolskie Water Management Authority in



Cracow, is currently within the structures of the Regional Water Management Authority in Cracow.

The legislator, in the Water Law act of July 20, 2017, regulated in Article 536 the matters concerning transferring to the Polish Waters the rights and obligations from agreements and decisions concerning investment projects on public waters owned by the State Treasury and basic water amelioration structures, fulfilled so far by regional water management authorities, provinces, provincial marshals or relevant provincial organisational units.

The tasks described in the draft LA&RAP document were carried out, until 31.12.2017, by the Małopolskie Board of Amelioration and Water Structures in Cracow, and since 01.01.2018 they have been exercised by PGW WP RZGW in Cracow, within the structure of which the PIO currently operates. The legal changes described above do not affect the existing regulations on the acquisition of properties, determination of the form and amount of compensation and payment of compensations. Properties are acquired under the provisions of the special flood act and the act on real estate management in the area "under the embankment", while on the basis of the Civil Code act in the embanked area.

For the purpose of restoring the family allotment gardens, the investor acquired 4 properties belonging to the Tarnów Municipality (plots with registration numbers 33/42, 34/1 district 0314 City of Tarnów and 45/1 and 45/3 district 0295) located about 1 km in a straight line from the area of the liquidated allotment gardens. Historically (in the 1970s and 1980s), the area was used by the Municipality as a place for depositing municipal waste with its legal status being unsettled as a landfill.

During the individual consultations with the Management Board of the Małopolskie Regional Allotment Federation, the Management Board of FAG Semafor and users of allotment gardens, negative opinions on the planned location were obtained, therefore, the Municipality was again asked to indicate other properties. The Municipality, however, does not have other replacement properties, which could be allocated for that purpose, such properties have not been obtained from the State Treasury's resources, either (talks were held with KOWR and the Starosta as holders of those resources), hence, a cash equivalent for the lack of a replacement property will be paid to the PAF according to law.

Re. 15 There is no provision which excludes the application of Article 20(3) of the special flood act. Nevertheless, the applicable regulations cannot oblige the Investor to fulfil an infeasible

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obligation. The search for a replacement property has failed due to the lack of an equivalent plot of land meeting the requirements of a property of a similar nature for reinstatement of the FAM. It should be emphasised that, as already indicated in the answer to question 9, the right to obtain a replacement property is not an absolute right. If such an equivalent property cannot be obtained, the **possibility of paying the cash equivalent should be considered as compensation for the lost right**. This thesis is confirmed by the ruling of the Provincial Administrative Court in Cracow of January 29, 2019, file no. II SA/Kr 1316/18. As the Court noted, the obligation laid down in the above-mentioned provisions concerns the provision of replacement land for the “restoration of the family allotment garden”. A family allotment garden has its own normative meaning (a separate area or areas intended for the purpose of family allotment gardens, consisting of plots and a general area, used by gardeners for joint use, equipped with garden infrastructure), which means that this provision does not sanction the obligation to grant any replacement property, but one that is to be used for the “restoration” of the allotment garden.

Thus, it was planned, as a measure to mitigate the effects of the liquidation of a part of FAG Semafor, to create a database of information about unused allotment gardens at other allotment gardens located within the area of the city and municipality of Tarnów for the gardeners interested in continuing to use the gardens. The investor is in contact with the Management Board of the Małopolskie Regional Allotment Federation and will update information about unused allotment gardens on an ongoing basis. Those interested will be able to move to other existing gardens. Some people have already acquired new allotment gardens on their own, which was announced to the Consultant's representatives at the meetings held in November, during which protocols agreeing the compensation amounts were signed with users of the allotment gardens planned for liquidation. As assured by the President of FAG Semafor at the meeting on February 6, 2020, the free allotment gardens located at this garden were also distributed among gardeners who managed allotment gardens intended for liquidation.

This activity will continue throughout the duration of the Contract (as described in detail in the answer to questions 18 and 19).

Re. 16 and 16 (according to the numbering in the *Question Form*). The answer to this question is given above. In addition, we explain that the Investor has optionally offered a replacement property or cash equivalent obtained from the Tarnów Municipality to the Regional Management

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Board of PAF. This equivalent may be used by the PAF to acquire a legal title to the replacement property.

Compensation will be paid in favour of the Tarnów Municipality **for the lost property ownership right** for the properties taken over by law for the benefit of the State Treasury, in each case (acquisition of a replacement property or not).

How to inform the parties about the planned Works Contract and the entities that notified the public is described in Chapter 8 of the draft LA&RAP document.

Re. 17 PGW WP RZGW in Cracow does not have any other properties that it could offer as replacement properties, and therefore, alternatively, a cash equivalent was envisaged to be paid for the limited property right held by the Polish Allotment Federation in relation to the areas taken over by law for the benefit of the State Treasury.

The claim that consultations with "allotment garden users" took place on this subject (here: proposed replacement properties) is true. The Consultant's representatives met in November 2019 individually with the gardeners having allotment gardens, in the Gardeners' House, in the area of FAG Semafor, at the area planned for the creation of the embanked area, and protocols were signed during the meeting agreeing on the amount of compensation, and at that time, the persons were also asked to express their opinion on the proposed replacement properties; these talks were listened to by members of the Management Board of FAG Semafor. The opinions obtained were negative.

Re. 18 Information about unused allotment gardens will be available at the information point(s), which will operate during the entire period of execution of the Works Contract.

1. Directly in the Project's main office, which will operate as a consultation point:
AECOM Polska Sp. z o.o., Odra-Vistula Flood Management Project Al. Pokoju 1, Building K1,
Cracow 31-548,
Ms Marta Rak, tel. +48 601 824 298 (Senior Support Expert for Properties and Technical Assistance for the Client, AECOM Polska Sp. z o.o.),
Mr Tomasz Jankowski, tel. +48 505 028 137 (Property Specialist, AECOM Polska Sp. z o.o.).
2. Directly at the Employer's office:
PGW WP RZGW in Cracow
ul. Marsz. Józefa Piłsudskiego 22
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+48 12 62 84 209 (Ms Aleksandra Macek PGW WP RZGW in Cracow, Ms Rafał Sionko PGW WP RZGW in Cracow).

Additionally, questions can be sent:

- Through the Polish Post to addresses as above, or
- Through the Internet:

website <http://www.krakow.wody.gov.pl>;

e-mail: krakow@wody.gov.pl

Full contact details, including telephone numbers and personal details of persons, are provided in the LA&RAP and in the information brochure, which was distributed at the meetings held on 15.06.2019, 03.09.2019, as well as at the open meeting on 06.02.2020. Contact details were effectively disseminated among the gardeners, the Consultant receives numerous phone calls with questions concerning, among others, the issue of compensation payments and attempts to answer them comprehensively.

Re. 19 This issue was discussed during the presentation provided at the meeting on February 6, 2020.

Thus, it was planned as a mitigation measure to create a database of information about unused allotment gardens at other allotment gardens located within the area of the city and municipality of Tarnów for the gardeners interested in continuing to use the gardens. The investor is in contact with the Management Board of the Małopolskie Regional Allotment Federation and will update information about unused allotment gardens on an ongoing basis. Those interested will be able to move to other existing gardens.

At the moment, no information about free allotment gardens has been added to the database. However, additional activities related to the recovery of allotment gardens were initiated as a result of talks between the Investor's representatives and the Management Board of FAG Semafor, where the existing users are not interested in further management. This activity has been coordinated by the Małopolskie Regional Management Board of PAF since November 2019, so the first effects of this work should appear soon.

Additionally, regardless of the Investor's actions, as declared by the representative of the Regional Management Board of PAF at the meeting on 06.02.2020, the Regional Management Board may create such a list of persons waiting for free allotment gardens, which will expedite

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the process of transferring them to the interested gardeners. Technical issues remain to be discussed, the Consultant, during the course of surveys, obtained information about the gardeners willing to continue such activity, so he can immediately forward this data to the Regional Management Board of FAG.

If you express such will, the Consultant will pass this information on directly to you when free allotment gardens appear.

Re. 20 The Consultant does not interpret the statements of gardeners, the statements indicated in the document were directly articulated by the gardeners at the meetings (November 2019) at which the establishment protocols of compensation amounts were signed.

The term **Cut-off date** is a term derived from the above-mentioned World Bank Operational Policy OP 4.12. It is not enforceable in Polish legislation.

For the purpose of preparing the draft LA&RAP document, the cut-off date is the date of completion of the socio-economic studies for the Works Contract 3D.2/1, i.e. 26.07.2019.

Re. 21 The draft LA&RAP document indicates the data valid as at the date of preparing the document in question, based on the information provided by the Management Board of FAG Semafor. All plantings and structures, including those located on unused allotment gardens, are valued. Compensation is paid to the persons who, as of the date the IPIP decision was final, i.e. 13 October 2017, had the right to use the relevant allotment garden.

Re. 22 The World Bank's Operational Policy (OP 4.12 Involuntary Resettlement) is an additional element that applies to the implementation of this Works Contract, as the investment is financed, inter alia, by a loan from the International Bank for Reconstruction and Development. This document does not replace the Polish legislation, i.e. the Special Flood Act referred to in the draft LA&RAP document, the Real Estate Management Act or other legal acts indicated in Chapter 4, point 4.1, which were indicated as the first ones to take precedence over the Operational Policy OP 4.12 itself (the issue of making this document available was discussed in the answer to question 1, there are also addresses given there to websites where these documents are published). Importantly, where there are differences between the Polish regulations and the

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provisions of OP 4.12, the provisions that are more favourable to persons affected by the Project implementation are applied.

Re. 23 The application of the World Bank's Operational Policy OP 4.12 in the implementation of OVFMP is a commitment adopted by the Polish Government in the loan agreement no. 8524 PL of September 10, 2015 signed with the World Bank. This obligation is transferred to each Investor executing the Contracts which are part of the Odra-Vistula Flood Management Project.

Due to the differences between the Polish law and the World Bank's operational policy OP 4.12, corrective actions have been prepared, which are applicable to the implementation of the OVFM Project and its components. These issues are described in detail in the following programme documents:

- *Project Operations Manual* available at the address:

http://odrapcu2019.odrapcu.pl/doc/POM_PL.pdf

- Resettlement Policy Framework available at the address:

[http://odrapcu2019.odrapcu.pl/doc/OVFMP/Ramowy dokument dotyczacy Przesiedlen i Pozyskiwania Nieruchomosci.pdf](http://odrapcu2019.odrapcu.pl/doc/OVFMP/Ramowy_dokument_dotyczacy_Przesiedlen_i_Pozyskiwania_Nieruchomosci.pdf)

A matter that needs to be stressed is the fact that (as already indicated in the answer to question 22), where there are differences between the Polish regulations and the provisions of OP 4.12, the provisions that are more favourable for people affected by the Project are applied.

The "No objection" clause is obtained for the final version of the LA&RAP after public consultations (more information on this procedure can be found in the document entitled "Project Operations Manual" available at http://odrapcu2019.odrapcu.pl/popdow_dokumenty/).

The Bank provides that the LA&RAP should be drawn up prior to submitting the IPIP award application, but it was not possible in the case of the Works Contract 3D.2/1 Construction of the right embankment of the Biała River in the City of Tarnów, because its preparation and obtaining the IPIP decision took place before this task was included in the scope of the OVFMP.

The Bank's consent was thus obtained to initiate the payment process for this Works Contract, which was justified by the need for the entitled persons to obtain compensation as soon as possible.

Re. 24 The statement contained in question 24 *"about the lack of activities aimed at restoring conditions before the Project implementation"* is inadequate. The proof of this is mainly the fact that the Investor has undertaken activities related to signing an administrative settlement between the Tarnów Municipality and users of the allotment gardens which are located on properties 1/35 and 1/37 (numbers after the division), it also applies to allotment garden number 731. In the case of these properties, the PAF did not have the right of usufruct before taking over their ownership to the Treasury. Thus, acting only on the basis of Polish regulations, it could be assumed that the owner of these properties was the Municipality of Tarnów, and the gardens located there were used illegally. Therefore, when determining the compensation, the Governor would thus indicate in the issued decision that all compensation for the properties and its components will be paid to the Municipality. Then, the gardeners would have to take individual legal steps to possibly enforce part of the compensation for plantings and structures from the Municipality. Thanks to the efforts of PGW Polish Waters, the signing of the settlement is now underway and compensation for the land components will be paid directly to the users of the allotment gardens.

The lack of a replacement property that would be accepted by the gardeners initiated the idea of looking for free allotment gardens in other FAGs, including their active recovery from users not interested in their further use.

Re. 25 These actions are described in the draft LA&RAP document and indicated in the answers to previous questions (see: database of free allotment gardens). Additionally, the embankment and the newly created embanked area will be a walking and recreation place accessible to the local residents.

Re. 26 In their IPIP decision no. 01/2017, the Governor indicated, in accordance with the provisions of Article 24 of the special flood protection decision, the deadline for releasing the property as the 14th day from the date when the decision in question becomes final. In accordance with the provisions of Polish law, the works could therefore start on the 15th day after the decision was final.

In turn, acting in accordance with the provisions of Article 20 cl. 2, the Investor had a two-month period to agree on compensation with the entitled persons. If such a scenario had taken place, no compensation would have been paid before the works started.

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It should be stressed, however, that the Investor did not use the right to take over the properties and start the works, and in this respect, he follows the guidelines of the World Bank's Operational Policy OP 4.12. As indicated in the draft LA&RAP document in chapter 2 (paragraph 2), the works may be carried out if compensation is paid.

Re. 27 The inventory of plantings and structures on your allotment garden was carried out by a property appraiser, the meetings held on November 6, 14, 21, 22, 29, which took place in the Gardener's House, and at which the establishment protocols on the compensation amount were signed. The users of the plots from the embanked area familiarised themselves with the estimates and with the content of the documents in which the amount of compensation to be paid was agreed and the lawyer participated in such meetings in order to clarify any possible doubts to the gardeners.

Re. 28 This question was addressed to the Management Board of FAG Semafor. After obtaining the answer, these explanations will be communicated to you immediately.

Additionally, it should be pointed out that the Investor has no influence on FAG Semafor's internal decisions. However, it is undeniable that the existing owner could use the property free of charge within the period set out in the IPIP Decision, i.e. for 14 days from the date on which the IPIP Decision became final. And in accordance with the assumptions which were adopted by the Investor in the draft LA&RAP document made out in accordance with Operational Policy OP 4.12, the deadline for free use has been extended until the payment of compensation and commencement of construction works.

Re. 29 The allegation of intentional and deliberate failure to comply with the provisions of the special flood act is unfounded, in this letter, as well as at the meeting of 06.02.2020 itself, the circumstances were explained which had occurred at the turn of 2017 and 2018, when one institution was liquidated (here: Małopolskie Board of Amelioration and Water Structures in Cracow) and a new one was appointed in its place (here: PGW WP).

Re. 30 All the properties indicated in the IPIP decision as permanent occupation have been acquired in favour of the State Treasury and compensation will be paid for all the properties. Article 21(2) of the Constitution stipulates that expropriation is allowed only if it is for public

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purposes and with fair compensation. The construction of a flood control embankment is a very important public purpose because it protects, among other things, human life, and compensation will be paid for the properties. The investment is carried out with respect for the law, including the Constitution.

Re. 31 Compensation is paid for the damage actually suffered (Latin *damnum emergens*). It includes components of the property in the form of loss of plantings, facilities and structures located on plots. The purpose of the compensation is to make up for the financial situation of the person who was deprived of the right to the allotment garden and to enable to restore this situation to the one had before the expropriation. Therefore, the compensation covers the equivalent of each lost asset (plants, building structure, etc.), at prices determined by the valuer. The fixed amount of compensation for each allotment garden reflects the condition of the garden and should allow for its restoration in a different place.

Re. 32 Investment implementation is a multi-stage process and frequently long-lasting. In the case of this investment, the payment of compensation for allotment gardens as one of the stages precedes the stage of contractor selection and commencement of construction works by the contractor. The investor wants the gardeners to use their allotment gardens for as long as possible. This happened as a result of a coincidence of many circumstances, and as pointed by the President of the Management Board of FAG Semafor, many gardeners are satisfied with this fact.

The allotment gardens can be used until compensation is paid as indicated in chapter 3.4, second hyphen of the draft LA&RAP document.

The omission of the stage of establishing the compensation amount does not affect the amount and payment of compensation due to the gardeners. As rightly emphasised in the questions, compensation is due and this fact is not disputed.

Re. 33 As indicated in the answer to question 26, works could start after the property is released (article 24 of the special flood act) and before the compensation is paid (article 20(2) of the special flood act), while the World Bank's requirements state that works could be carried out on the



property after compensation is paid to those entitled to compensation. A two-month period for negotiations is specified in the special flood act – establishment on the compensation amount. The amount of compensation shall be determined by the Governor after the ineffective expiry of this period.

However, the World Bank's regulations do not specify the exact date of compensation payment, stating only that it is to be paid before the commencement of construction works.

Re. 34 The investor has taken steps to provide a replacement property, the steps taken are described in the draft LA&RAP document. In view of the fact that the acquired replacement properties may not be accepted, it was envisaged that a cash equivalent may be paid. Such solutions have already been practised on a national scale, e.g. in Dolnośląskie Province.

Re. 35 It is obvious that since it is not possible to obtain a replacement property corresponding to the conditions for the reinstatement of allotment gardens, compensation in the form of an equivalent for the lost property should be considered. As already pointed, the right to obtain a replacement property is not an absolute right. If such an equivalent property cannot be obtained, the possibility of paying the cash equivalent should be considered as compensation for the lost right. This thesis is confirmed by the ruling of the Provincial Administrative Court in Cracow of January 29, 2019, file no. II SA/Kr 1316/18. As the Court noted, the obligation cited in the above-mentioned provisions concerns the provision of replacement land for the “restoration of the family allotment garden”. A family allotment garden has its own normative meaning (a separate area or areas intended for the purpose of family allotment gardens, consisting of plots and a general area, used by gardeners for joint use, equipped with garden infrastructure), which means that this provision does not sanction the obligation to grant any replacement property, but one that is to be used for the “restoration” of the allotment garden.

As there is no suitable replacement property, mitigation measures have been taken as already described in the answer to questions 15, 18 and 19.

Re. 36 The Investor does not keep a separate register of meetings with the management board of FAG Semafor. The investor may only present information about the dates of official meetings with the Management Board and gardeners.

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Re. 37 These issues have already been discussed in the answers above.

Re. 38 Persons/groups of persons requiring special care have been defined as people who, due to: gender, ethnicity, age, mental or physical disability, difficult material situation or social position, are more vulnerable to the negative effects of **resettlement than other groups, and who may have limited possibility to make claims or benefit from resettlement assistance** or to take advantage of the benefits related to the project.

The purpose of the surveys conducted in June 2019 was to identify the persons/groups to be covered by special assistance. You were also asked to complete such a survey on 28.06.2019 and, as you probably noticed, the survey included a number of questions about household members, health status, material status, etc. Just like you, many people did not answer such questions and were also dissatisfied that such questions were asked at all by the interviewers.

An additional explanation is needed here, the Operational Policy OP 4.12 of the Bank has been created as a universal procedure for the whole world, with the assumption that it will apply in cases of **RESETTLEMENTS**, which means, among others, physical or economic resettlement. These terms are defined as:

Physical resettlement – loss of place of residence or commercial facilities, such as shops or workshops, or facilities needed to generate revenue.

Economic resettlement – loss of >20% of agricultural land, where the income of the Project affected person (PAP) is based largely on agriculture.

Additionally, it should be pointed out that in the case of the embanked area, the special flood act did not regulate the compensation issues - it did not oblige the Investor to pay. Those properties did not change ownership, and the Governor indicated only in the justification for the IPIP decision that the area should be cleaned up so that any planting or structures are removed to allow the flow of large waters.

For this reason, when applying the Bank's Policies, and not the obligations of the special flood act, it was decided to pay compensation for the physical liquidation of gardens in the embanked



area, and therefore the procedure takes place under the principles of the Civil Code. These two procedures are described separately in the draft LA&RAP document.

Re. 39 The term "*public consultation*" in the draft LA&RAP document was assigned to the activities of the authorities that issued individual administrative decisions: decision on environmental conditions, water permit decision, IPIP decision.

This term also included the meetings held at FAG Semafor as well as the open meeting that took place on 06.02.2020. Details are described in the draft LA&RAP document, as well as in the answers to questions 6 and 7.

Re. 40 We confirm that chapter 13 contains a general description of the subsequent activities/steps that are necessary to prepare and implement the LA&RAP. This chapter is based, as indicated in the document, on the underlying document, i.e. the *Resettlement Policy Framework* available at the address:

http://odrapcu2019.odrapcu.pl/doc/OVFMP/Ramowy_dokument_dotyczacy_Przesiedlen_i_Pozyskiwania_Nieruchomosci.pdf

This reference is also indicated in the draft LA&RAP.

However, detailed information on the planned dates of these activities are indicated in Appendix no. 3 to the said document (this appendix will be updated). It was prepared in graphical form to better illustrate the planned dates and deadlines.

Re 41 Thank you for this remark, the nomenclature will be corrected in the draft LA&RAP document and replaced by a term better illustrating the prepared information for gardeners. The term 'information leaflet' will not mislead the reader.

We confirm that the meeting was not registered, as it should be pointed out from experience to date that such a need was not reported by participants of such meetings.

Sir, since we are not a party that can respond to your comments on the letter from the President of FAG Semafor, we allow ourselves to pass on that part of your correspondence to the person indicated. If the President of FAG Semafor refers to this polemic in writing and includes us in the circle of recipients, we will provide you with such information.

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Regardless of the above, we have also asked the Mayor of the City of Tarnów to respond to the information that you included in your written statement and you raised at the meeting on 06.02.2020, i.e. the issue that *"the City of Tarnów has areas east of John Paul II Avenue, some of which were recently put up for sale"*. We will also inform you in this respect after receiving a response from the authorities of the City of Tarnów.

We would also like to clarify that, according to the provisions of the draft LA&RAP document, answers to the questions asked during the open meeting are provided within 7 days, in this case the deadline was exceeded due to the number and volume of questions/matters sent in the *"Question Form"*.

We hope, however, that the information provided in this letter will be helpful and will dispel your concerns. Thank you for your comments, some of them will be included in the final version of the LA&RAP document.

As per our declaration made in the letter of 17.01.2020, ref. POPDOW/KR/60549311/20/0086, if you consider that some issues require more extensive discussion, it is also possible to organise an individual meeting at your convenience. To arrange such a meeting, please contact Ms. Marta Rak at tel. no. 601 824 298.

With regards,

.....

Barbara Chammas

Project Manager

AECOM Polska Sp. z o.o.

Attachments:

1. Copy of protocols on the inventory-taking of the allotment garden no. 731 (protocol on the inventory-taking of the entire allotment garden and protocol on the part of the allotment garden which is located on the property 1/35)

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Recipients:

- a. Addressee
- b. to files
- c. PGW WP RZGW in Cracow

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