



LAND ACQUISITION AND  
RESETTLEMENT ACTION PLAN

SUPPLEMENT

ODRA-VISTULA FLOOD  
MANAGEMENT PROJECT



Projekt Ochrony  
Przeciwpowodziowej  
w Dorzeczu Odry i Wisły



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# SUPPLEMENT TO THE LAND ACQUISITION AND RESETTLEMENT ACTION PLAN

## FINAL DOCUMENT

## ODRA-VISTULA FLOOD MANAGEMENT PROJECT

THE SUPPLEMENT TO THE LAND ACQUISITION AND RESETTLEMENT ACTION PLAN IS PREPARED FOR THE WORKS CONTRACT IMPLEMENTED BY THE STATE WATER HOLDING POLISH WATERS – THE REGIONAL WATER MANAGEMENT AUTHORITY IN CRACOW

### COMPONENT 3:

FLOOD PROTECTION OF THE UPPER VISTULA

### SUBCOMPONENT 3A:

Flood Protection of Cracow and Wieliczka

### CONTRACT 3A.2:

Flood protection in Serafa Valley

### WORKS CONTRACT 3A.2/3

Flood protection in Serafa Valley – Malinówka 3 reservoir

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## 1 Summary

The Supplement to the Land Acquisition and Resettlement Action Plan (LA&RAP) for Works Contract 3A.2/3 *Flood protection in Serafa Valley – Malinówka 3 reservoir* implemented under Contract 3A.2 *Flood protection in Serafa Valley* was prepared, as agreed with the World Bank, in connection with the detailing of solutions and conducting the arrangements with the PAP (the co-owners of the property which was divided under the decision on the flood protection investment implementation permit and partially taken over by the State Treasury – the part of the property taken over is hereinafter referred to as X, the part remaining to the PAP is hereinafter referred to as Y) concerning the land-for-land compensation package, which was provided for in the underlying LA&RAP document.

The co-owners of one of the properties that is planned to be partly occupied permanently, have initially expressed interest in a solution to compensate the impact not in the form of monetary compensation, but as land-for-land exchange. The Investor has obtained a written commitment from the authorities of the City and Municipality of Wieliczka (the local authority on whose land the part of the Works Contract 3A.2/3 will be executed) to make a replacement property available. Discussions were held with the PAP aimed at establishing the details of possible solutions for the exchange of the properties. The following options were being considered:

1. The land-for-land exchange only for the part of the property taken over for the benefit of the State Treasury, i.e. X plot accounting for approx. 40% of the original area of the plot prior to division. In this case, a part with the value equivalent to the X plot was planned to be separated from the replacement property with registration number 571/7 with an area of 1.5200 ha. The PAP was informed that the PAP can indicate which part of the property 571/7 the PAP would be interested in. In this case, the PAP would continue to be the owner of part of the Y property not covered by Works Contract 3A.2/3.
2. The land-for-land exchange of the PAP's entire property (part of the expropriated and the remaining part of the property, so-called "remnant"). The replacement plot proposed to the PAP is a property with the registration number 571/7 with the area of 1.5200 ha. The difference in the price of the properties would be compensated by a cash payment.

It should be additionally pointed out that during the discussions, the PAP has not determined that they have completely abandoned the solution consisting in paying the compensation in the monetary form for the expropriated part of the property.

Considering the options highlighted above, the Investor was required to take the necessary steps for carrying out the said exchange. The following should be pointed out as the activities to be followed if the PAP confirms their desired compensation solution to be "land for land":

- division of the replacement property (the replacement property proposed by the local government is more than twice the size of the PAP's entire property);
- acquisition/transfer to the State Treasury's resources of the part of the replacement property to be transferred to the PAP as a land-for-land equivalent.

An important point to note is the progress of the administrative procedure related to the obtaining of the investment permit implementation decision for Contract 3A.2/3 (hereafter IPIP). One of the Parties has appealed against the investment permit implementation decision no. 01/2022 issued by the

Governor of Małopolska issued on 01/24/2022. On 06/24/2022, after conducting an administrative proceeding concerning the appeal, the Minister of Development and Technology issued their final decision to overrule the appeal and grant the Investment Permit. As a result of this decision, the legal ownership of the properties being occupied for the investment implementation was transferred to the State Treasury, including the property of the PAP who filed an application for being awarded a replacement property.

According to the law, the Investor has two months from the day of the issuance of the decision by the Minister, i.e., 06/24/2022, to agree on the amount of compensation for each existing owner/co-owners. After this period, if no agreement is made between the PAP and the Investor, the amount of the compensation is determined by the Provincial Governor by way of an administrative decision.

It is ensured - with the land-for-land exchange between the PAP and the Investor in any of the options indicated above or with the payment of compensation - that properties are occupied as per the procedures defined in the Bank's Operational Policy OP 4.12., the RPF and Polish law, as described in the LA&RAP.

## 2 Land-for-land exchange

Within the framework of compensation measures, in accordance with the World Bank's policies, land-for-land compensation can be ensured through allocation of properties with an equivalent productive potential and location. The Special Flood Act does not indicate any special preference for the payment of land-for-land compensation; financial compensation allowing for purchasing a similar real property at a market price is rather assumed. However, in accordance with the LA&RAP's provisions, for the persons who have indicated a preference for land for land compensation, an attempt will be made to obtain suitable replacement properties.

For the Works Contract 3A.2/3, the co-owners of one of the properties initially indicated an interest in the land-for-land exchange option, hence the Investor took steps to acquire a replacement property. Indeed, the Investor does not have properties which could be allocated for exchange.

Due to the fact that the investment consisting in the construction of a dry flood protection reservoir Malinówka 3, located partly on the territory of the Municipality of Wieliczka, is a socially important flood protection project, the local government of this Municipality has sought out and identified the possibility of providing a replacement property from municipal resources. This property is located on the area of the same Municipality; the planning conditions of this property are similar to those of the property partly subject to be taken over by the State Treasury, while this property is more than twice the size of the PAP's entire property subject to the impacts of the investment. Hence, a potential land-for-land exchange involves additional measures such as, for example, the need to divide the property. If the property is divided, the division will be done in consultation with the PAP in such a way that the plot separated from property 571/7 corresponds in value to the expropriated X plot. If there are any small differences in price after such a division then, also in consultation with the PAP, one party or the other will make an additional payment in cash. In order to be able to effect the exchange, the Investor must acquire the property from the municipal resources to the State Treasury's resources. All these activities will take time, as they are related to conducting the relevant administrative procedures.

The Investor has also analysed the possibility of alternative procedural solutions for the property exchange, which will potentially allow to reduce the time to carry out the land-for-land exchange. They would consist of exchanging the properties (in the part that remained to the PAP after the acquisition of a part of the plot for the construction of the reservoir – Y plot) directly between the PAP and the Municipality. However, in order to be able to carry out such an exchange, it is necessary to obtain the special consent of the Mayor and City Council of Wieliczka (as a rule, consent is obtained in each case, also in the scenario of acquiring the replacement property to the State Treasury's resources) - as this is not a standard solution indicated in the legal regulations. After conducting discussions on that matter with representatives of the City and Municipality of Wieliczka, the Investor received a written assurance that the Municipality would agree to a solution involving a direct exchange of the PAP's Y property for the plot 571/7 (an appropriate resolution needs to be passed by the Municipality for the change to be effected formally). The solution was presented to the PAP after consent was obtained from the Mayor. It should also be pointed out that the exchange of the PAP's entire property was only possible until issuing the decision by the Minister. This is because on the date of issuing the said decision, the part of the property belonging to the PAP was expropriated - by virtue of law - to the State Treasury. Hence, it was no longer possible to exchange the entire property between the PAP and the Municipality. It was thus possible to exchange the remaining part of the PAP's property (plot Y) for

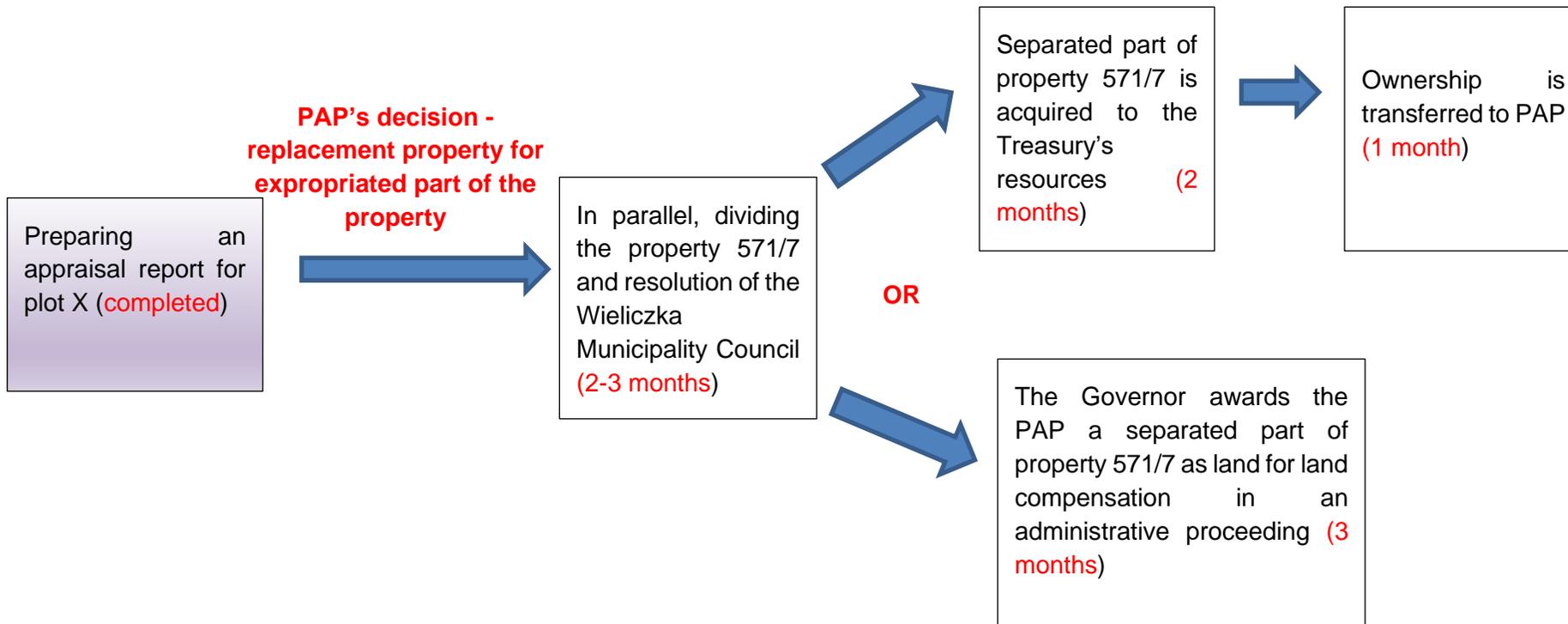
the Municipality's entire plot 571/7 with the PAP paying additionally for the difference in the price (for this additional payment the PAP will have the compensation paid for the expropriated X property), if they agree to such a solution. Possible solutions are described in detail below.

The activities/steps to be taken/conducted for the various land-for-land exchange options proposed to the PAP:

Option 1: Granting a replacement property under compensation (so-called "land-for-land") i.e. with regard to the part of the property taken over for the benefit of the State Treasury, i.e. X plot.

1. Valuation of the property, i.e. drawing up an appraisal report for the X plot (the activity carried out at the Investor's cost). The amount of compensation indicated in the appraisal report does not include taxes and other fees because the compensation is tax-free, additional fees related to the exchange of property will be covered by the Investor.
2. The division of the replacement property, i.e. plot 571/7 with an area of 1.5200 ha. The exchange is carried out on the basis of the equivalent monetary value of the replacement property and the property to be exchanged. The PAP was offered the opportunity to agree on how the replacement property would be divided.
3. The acquisition of a replacement property separated from plot 571/7 by the Investor to the State Treasury's resources from the Municipality of Wieliczka.
4. For actions under points 2 and 3, certain resolutions will have to be adopted and consents obtained by the City and Municipality of Wieliczka (resolutions of the City Council) and a proceeding will have to be conducted for the disposal of the property from the municipal resources to the State Treasury's resources under a no-bid procedure.
5. The transfer of ownership of the replacement property separated from plot 571/7 (signing of a notary deed between the PAP and the State Treasury's representative with a possible obligation of additional payment on one party or the other if there are minor differences in the price of the property). Alternatively, the Governor grants the replacement property indicated above as part of compensation, with the consent of the parties, in an administrative proceeding determining the amount of compensation.

Flow chart OPTION 1



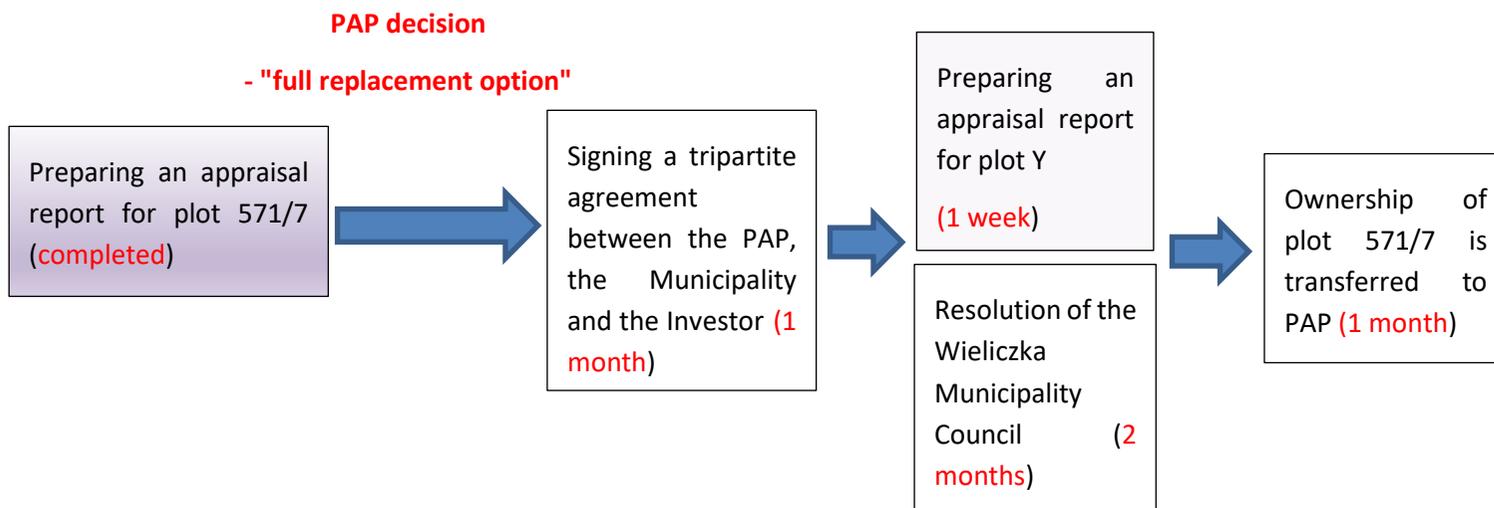
Option 2 recommended by the Investor: Exchange of the "land-for-land" of the remaining part of the PAP's property (the so-called "remnant") for the entire property 571/7 with the obligation to pay the difference in price - **exchange between the Commune and PAP**

The Y property (the part of the property remaining for the PAP after the expropriation of the X plot) would be exchanged for the entire property 571/7 from the Municipality's resources. Due to the difference in areas between these properties of 0.3511 ha from the PAP to 1.5200 ha from the Municipality's resources, which automatically results in a difference in the value of the monetary equivalents - the notary deed transferring the ownership of the property 571/7 would include an obligation on the part of PAP to pay additionally the difference in the price (for this additional payment, the PAP would have at one's disposal the compensation obtained from the State Treasury as compensation after taking over the X property for the benefit of the State Treasury). The consent of the authorities of the City and Municipality of Wieliczka was given for this solution, as indicated above. The strong support and willingness to cooperate on the part of the Mayor of the City and Municipality of Wieliczka should be highlighted, as this is an action which goes beyond the standard solutions included in the legal regulations.

Actions to be taken in case of Option 2:

1. Signing a tripartite agreement between the PAP, the Municipality and the Investor.
2. Preparation of an appraisal report for the PAP's Y property.
3. Resolution of the Wieliczka Municipality Council regarding consent to the exchange of properties.
4. Signing of a notarial deed transferring the ownership of the property 571/7 to PAP with the obligation to pay the difference in the properties prices.
5. Payment of the difference in the property price by PAP.

Flow chart OPTION 2



### Measures implemented

The properties are exchanged on the basis of a monetary equivalent and a replacement property is granted with such an area of the plot in question as is equivalent in amount to the plot being exchanged.

The Investor has commissioned to prepare an appraisal report at its own expense (for the expropriated property, i.e. X plot and the PAP's entire plot - before division - and the entire replacement property) from an independent valuer and sent these studies to the PAP so that they could familiarise themselves with the documents and indicate which exchange option they prefer. As described above, the Investor has indicated two possible exchange options in accordance with Polish law and WB policies:

1. The land-for-land exchange only to the extent of the piece of the property taken over for the benefit of the State Treasury (approx. 40% of the original plot area).
2. The land-for-land exchange of the PAP's entire property.

As a solution to shorten the time for implementing option 2, a proposal was described and given in a letter to the PAP to exchange the Y property for the entire property 571/7 directly between the PAP and the Municipality (with the need to pay the difference in price). In the event that PAP does not agree to the amount of the proposed compensation for the expropriated X property, they were proposed 70% of the compensation value indicated in the report and will thus already have the money for the additional payment in the price difference, hence it seems to be the optimal solution that should satisfy the PAP if he chooses the land-for-land exchange option of the Y property.

As indicated above, the PAP was able to choose the options described above, but it should be pointed out that during the discussions, the PAP has not determined that they have completely abandoned the solution consisting in paying the compensation in the monetary form.

### 3 Status of administrative procedures

The investment permit implementation decision (IPIP) no. 01/2022 was issued by the Governor of Małopolska on 01/24/2022 for the implementation of the investment titled "Construction of small retention reservoir: Malinówka 3 Reservoir on the Malinówka stream as part of the investment task entitled Increase of flood protection in the Serafa river valley". The clause of immediate enforceability was assigned to the decision, which, according to Polish law, entitles the Investor to implement it within 90 days of the date of issuing the decision and entitles to factually take the possession of the property and commence construction works.

One of the Parties has appealed against the decision. In the appeal, the Party objected the provisions formulated by the Governor in the IPIP decision, and objects that the IPIP decision is made immediately enforceable.

On June 24, 2022, the Minister of Development and Technology issued the final decision ref. DLI-III.7621.14.2022.KM.6. The Minister's decision upheld the Governor's decision in scope of transferring the ownership of the property to the benefit of the State Treasury, including part of the property belonging to the PAP.

As a result, the period of 2 months started on June 24, 2022 to agree on the compensation for the transfer of the ownership of the property to the State Treasury between the PAP and the Investor. Compensation arrangements with all other PAPs have been agreed per the LA&RAP for this investment, with the exception of a few cases where irregularities exist in land titling and/or PAPs have not been identified, in which cases the RPF procedures are being followed.

In accordance with the law (Article 20(2) of the Special Act), after this period, if no agreement is made between the PAP and the Investor, the amount of the compensation is determined by the Provincial Governor by way of a decision.

In accordance with the law (Article 20(2) of the Special Act), after 2 months, on August 26, 2022, the Investor submitted a relevant application to the Governor to determine the amount of compensation, indicating an alternative option in the application to grant a replacement property to the PAP (the measures taken and the status of talks with the PAP in terms of payment of land-for-land compensation are described). The PAP was informed in advance of the Investor's actions described above.

During the proceedings conducted by the Province Governor, the PAP did not uphold their request for a replacement property. The Governor thus appointed an independent expert valuer who prepared a new estimate study. The PAP familiarised themselves with the estimate study and did not raise comments. Hence, the Governor issued a decision on 01/18/2023 determining the amount of compensation. This decision became final on 02/07/2023 and the Governor sent this certificate by email to the Investor on 02/16/2023. Having been informed of the PAP's account number, the compensation was paid on 02/21/2023 to the indicated bank account.

## 4 Solutions adopted to be applied in relation to the PAP

As indicated above, the Investor conducted discussions with the PAP regarding the provision of a replacement property as an alternative to the payment of compensation in the monetary form. Two land-for-land exchange options were being considered, i.e.:

1. Compensation in the form of "land-for-land" only to the extent of the area covered by expropriation, i.e. X plot (approx. 40% of the original plot area).
2. The land-for-land exchange of the PAP's entire property (part of the expropriated and the remaining part of the property, so-called "remnant").

The details of this exchange are described in point 2.

It should be pointed out however that on 06/24/2022 the Minister issued their decision; this decision is final. From this date, the 2-month period to agree on the amount of compensation in a form to be agreed between the parties (i.e. PAP and the Investor) began to run. After the expiry of this time limit, according to the Special Act, the action is taken by the Provincial Governor and it is them who issue the decision on the amount of compensation (including the award of compensation in the form of a replacement property) after conducting the administrative proceeding (details are described in point 3).

**Thus, if a decision on the replacement property was not taken by the PAP within 2 months, then the relevant procedure/proceeding indicated below, as described in the RPF, POM, LA&RAP, was then applied:**

As soon as the permissible period for conducting the arrangements has expired, the Investor took actions in accordance with the steps provided in the OVFMP Project documents, inter alia in the RPF, the Project Operations Manual and the LA&RAP. In relation to the Bank's operational policy OP 4.12 "the process of resettlement should be closely linked to the schedule of the main investment so that the resettled people receive compensation before the construction or other activities covered by the Project begin". Hence, in the case the Investor does not come to an agreement on the amount of compensation with the property owner, and in order to enable the commencement of implementation of the OVFMP investments/tasks without further delay while reducing the possible inconveniences caused to the PAP by the lengthy waiting for settling the locally competent Provincial Governor's administrative decision on the amount of compensation, it is assumed (according to OP 4.12) that regardless of the pending administrative proceeding, the SWH Polish Waters proposed the PAP to pay the undisputed part of the compensation for the occupied plot even before a final administrative decision on the matter is issued. According to the procedure, this is a payment of 70% of the property value as determined in the appraisal report prepared at the order of SWH PW and presented to the PAP in accordance with the 70% procedure used in the OVFMP and the LA&RAP for this Contract. The PAP was informed that the acceptance of this payment does not mean that the PAP acknowledges the amount of compensation determined in the appraisal report and will not have any impact on the proceeding conducted by the Provincial Governor to determine the amount of compensation for the expropriated property. The remainder of the compensation will however be settled and paid to the PAP after receiving a final decision establishing the amount of compensation, up to the amount determined in that decision.

The PAP however refused to accept the proposed amount, i.e. 70% of the compensation amount, which was proposed by the Investor on the basis of the appraisal report prepared. The amount was left available for the entire period of the administrative proceedings conducted by the Governor and its payment was guaranteed by the Director of RZGW in Cracow in a statement sent to the PAP indicating that the amount can be paid at any time until the decision on compensation is issued by the Provincial Governor, provided the PAP agrees to it. When a compensation decision was issued by the Provincial Governor, the resulting amount was paid to the PAP.

## 5 Moment of occupation of X plot (taken over from the PAP by virtue of law for the benefit of the State Treasury)

As implied by the World Bank, the Schedule of Works has been analysed and structured so that the property belonging to the PAP, with whom discussions were held to provide a replacement property, is occupied as late as possible.

The plot was not occupied before any of the following conditions has been met, precisely the one that occurred earliest (condition 1 in this case):

1. The PAP was proposed to be paid 70% of the compensation amount (the PAP did not agree to such payment), thus – by **alternatively** assuming the possibility that the PAP refuses to accept the proposed amount - the PAP was guaranteed such payment at any time until the decision is issued by the Governor (submission of an appropriate statement with an explanation of the procedure applied), and an application was submitted to the Małopolska Governor to determine the amount of compensation (with an option to exchange land for land) - such an application was submitted to the Provincial Governor on 08/26/2022 (2 months after the decision becomes final);
2. The PAP will be paid the full value of the compensation for the expropriated X property (if the PAP finally decides to accept the compensation in the monetary form) – as to the final decision - cash payment or "land for land" compensation, the PAP did not uphold their request for a replacement property during the proceedings with the Governor.

By applying the above solutions, construction works could start in accordance with Polish law and World Bank policies.

### Contractor's schedule of works

Attached to this LA&RAP Supplement is the Schedule of Works that the Contractor prepared in accordance with the terms of the contract in April 2022.

When analysing the preliminary Schedule of Works it can be pointed out that the Contractor plans to start felling from 09/01/2022 (item 7 of the Schedule), and this is in line with the conditions of the decision on environmental conditions issued by RDOŚ in Cracow.

The first activity to be carried out on the X property is specifically the felling of trees and bushes - the plot is very overgrown; no other activities can be performed on it until the felling has been completed and the timber and tree waste removed.

The Site was released to the Contractor on August 3, 2022 (i.e. at the latest date for its handover under the terms of the agreement binding on the parties). The commencement of works took place on 08/10/2022. The Contractor did not however enter the X property until an application to agree the compensation amount was submitted to the Provincial Governor and the PAP was proposed to be paid 70% of the compensation. The PAP was informed of this procedure in writing.

The felling of trees and bushes under Works Contract 3A.2/3 started on 09/01/2022, i.e. in time enabling to access the X plot. The felling started on the opposite side of the Construction Site to the location of the X plot, so that physical occupation of this property would occur as late as possible.

## 6 Summary

The elaborated solutions concerning the arrangements with the PAP are in line with the provisions of the Land Acquisition and Resettlement Action Plan applicable to the Works Contract 3A.2/3, as well as the OVFMP framework documents, i.e. the RPF and POM, and the World Bank's Operational Policy OP 4.12.

As indicated in the LA&RAP, the amount of compensation for lost properties (both monetary compensation and compensation in the form of land for land) will be determined based on appraisal reports prepared by an independent property valuer or by a decision of the Governor of Małopolska. The valuation constituting the basis for determining the compensation amount will be reliable, objective and independent, so that the current owner receives a price for the property corresponding to the actual loss, and thus minimises the negative impact of the loss of property ownership on their financial situation. The amount of compensation will be determined according to the definition of the property price and its replacement value, including transfer taxes and fees.

Arrangements between the Investor and the PAP will continue until a period of two months from the date of the decision of the Minister of Development and Technology has elapsed. After this period, a proceeding to determine the compensation amount will be initiated by the Provincial Governor.

The PAP has been informed of the legal framework and potential actions imposed on the Investor by the provisions of law, as well as the provisions of the World Bank's Operational Policy OP 4.12. The PAP was requested to make a decision as soon as possible so that, in the event of a positive decision by the PAP on a land-for-land exchange, the Investor could proceed with the actions intended for the exchange.

At the same time, the Investor took the action indicated by the World Bank to ensure that the Contractor structured its Schedule of Works in such a way that the occupation of the property plot X, which belonged to the PAP, occurs as late as possible. This occupation will take place no sooner than the procedure for payment of 70% of the compensation value to the PAP has been carried out or, alternatively, monetary compensation is paid to the PAP or, in the event that the PAP evades payment of the proposed amount of 70% by the Investor, an assurance is given for the PAP that such payment is available at any time until the Governor's decision is issued or, in the case of a land-for-land exchange, a tripartite agreement is signed between the PAP, the Investor and/or the Municipality guaranteeing a replacement property in Option 1 or 2 for the PAP.

By introducing the solutions indicated in this Supplement to the LA&RAP, it will be possible to start construction works, which are expected by the local communities of several housing districts in the city of Cracow and will contribute to the elimination of:

1. Threats to the lives and property of people living in the area, which is subject to regular flooding by the waters of the Serafa River (this mainly concerns residents of two districts of Cracow: Bieżanów and Złocień).
2. Social unrests and interventions by residents, NGOs and local authorities.
3. Failure to achieve the full functionality of the remaining reservoirs in the Serafa river valley constituting a uniform flood protection system to protect the health and lives of Cracow's residents.

4. Lack of ability to finish the Contract within the Project timeframe and thus the loss of investment funding by SWH PW.
5. Failure by SWH PW to meet the contractual deadline for handing over the construction site, resulting in claims on the part of the Contractor, exposing the State Treasury to financial losses.

Status of the case as at 02/21/2023: the compensation was paid to the PAP in cash on the basis of the Małopolska Governor's decision. The X property was occupied after meeting the conditions described above in para. 5, which was in accordance with the procedures provided for in the RPF and POM and in line with World Bank Operational Policy OP 4.12

## 7 Appendices

1. Schedule of works