

立法會
Legislative Council

LC Paper No. CB(2) 1094/04-05
(These minutes have been seen by
the Administration)

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the special meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 18 February 2005**

Members present : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Fred LI Wah-ming, JP
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Yuen-han, JP
Hon CHAN Kam-lam, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Timothy FOK Tsun-ting, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip

Hon Frederick FUNG Kin-kee, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon LI Kwok-ying, MH
Dr Hon Joseph LEE Kok-long
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon MA Lik, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Patrick LAU Sau-shing, SBS, JP
Hon Albert Jinghan CHENG
Hon KWONG Chi-kin
Hon TAM Heung-man

Members absent : Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, GBS, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Bernard CHAN, JP
Hon WONG Yung-kan, JP
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBS, JP
Hon Andrew CHENG Kar-foo
Hon Daniel LAM Wai-keung, BBS, JP
Hon CHEUNG Hok-ming, SBS, JP

Public Officer attending : The Hon Donald TSANG Yam-kuen, GBM, JP
Chief Secretary for Administration

Agenda item I

Mrs Rita LAU
Permanent Secretary for Housing, Planning and Lands
(Planning and Lands)

Ms Anissa WONG
Director of Leisure and Cultural Services

Agenda item II

Mr Jonathan McKinley
Assistant Director of Administration
(Sustainable Development) 2

Clerk in attendance : Mrs Justina LAM
Clerk to the House Committee

Staff in attendance : Mr Arthur CHEUNG
Acting Legal Adviser

Ms Pauline NG
Assistant Secretary General 1

Mrs Constance LI
Chief Council Secretary (2)5

Miss Lolita SHEK
Senior Council Secretary (2)7

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The Chairman welcomed the Chief Secretary for Administration (CS) and the other government representatives to the meeting.

I. West Kowloon Cultural District project

(LC Paper Nos. CB(2) 844/04-05(01) to (03) and CB(2) 888/04-05)

2. CS highlighted the salient points in the Administration's paper (LC Paper No. CB(2) 844/04-05(01)). CS also informed Members that more than 100 000 people had visited the exhibitions displaying the screened-in Proposals. In addition, more than 15 000 comment cards and 220 written submissions on the West Kowloon Cultural District (WKCD) development had been received, as at 17 February 2005.

3. Dr KWOK Ka-ki said that at the meeting of the Legislative Council (LegCo) on 5 January 2005, Members passed the motion on "West Kowloon Cultural District development project" requesting the Administration to, inter alia, remove the canopy as a mandatory component of the WKCD development, and withdraw the decision to adopt the single-development approach for the project. CS, however, stated after the motion debate that the Administration could not accede to these requests.

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4. Dr KWOK further said that both the public and LegCo Members did not support the approach adopted by the Government in the WKCD project. Dr KWOK urged the Administration to accept the proposals put forth in the motion passed by LegCo on 5 January 2005. Dr KWOK added that the public consultation exercise on the three screened-in Proposals could not substitute for the views expressed by LegCo Members, as they were returned by the geographical and functional constituencies and represented the various interests of the community.

5. CS responded that he hoped that there would be cooperation between LegCo and the Administration. Scrapping the single-development approach or the canopy design meant overturning the whole project and terminating the present public consultation exercise which was based on the current development blueprint. Moreover, as some of the views expressed by Members were inconsistent, the Administration found it difficult to follow up Members' requests.

6. CS assured Members that a decision on the WKCD project had not yet been made. He hoped Members would allow time for members of the public to express their views on the project. After the public consultation exercise was completed, the Administration would give a full account of the views received and revert to Members on the outcome of the consultation. CS stressed that the Government would take public opinion fully into account before proceeding with the WKCD project, and the final decision would be made in the best of Hong Kong's long-term interest.

7. Dr KWOK Ka-ki commented that the design of the comment card on the WKCD project only allowed the respondents to choose from the three screened-in Proposals. It was not possible to gauge the public's views on whether the canopy design and the single-development approach should be adopted for the WKCD development.

8. Mr James TIEN also expressed concern that the design of the comment card did not enable respondents to give other views on the project. As a result, those who did not favour any of the three Proposals might choose not to complete the comment card. Mr TIEN asked how the Administration would deal with this category of views.

9. CS said that the comment card was designed with professional input, and that item 6 in the card had provided for respondents to indicate whether they would like the Government to take forward to the next phases any of the three Proposals or none at all and give any other comments on the project. CS added that the Hong Kong Polytechnic University had been appointed as an independent consultant to analyse all the views received during the consultation exercise.

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10. As regards the canopy design, CS explained that it was the winning design in the open concept competition in 2001, and it was included as one of the mandatory requirements in the Invitation for Proposals (IFP) for the development of WKCD. Removing the canopy requirement from the project would mean aborting the IFP exercise. CS requested Members to await the outcome of the public consultation exercise before taking a view on the design.

11. Mr LEE Wing-tat said that Members did not object to the WKCD project. They only objected to the Administration's approach in taking forward the project. Referring to CS's emphasis on public consultation, Mr LEE said that Members were returned from geographical or functional constituencies and represented the majority interests of the community. He asked whether the Government would abandon the single-development approach if both LegCo Members and the majority of views collected in the public consultation exercise did not support the approach.

12. CS reiterated that scrapping the canopy design would mean overturning the whole project. He added that while the Administration respected the views of LegCo, the Administration would need to consider whether Members' requests were acceptable.

13. Mr LEE Wing-tat said that the Government could choose not to accept any of the three screened-in Proposals, since only an IFP and not a tendering exercise had been conducted. He asked what actions the Government had taken after the motion on WKCD project was passed by LegCo on 5 January 2005.

14. CS replied that the WKCD project had been discussed at more than 20 meetings of LegCo and its committees since 1998. Following the passage of the motion by LegCo on 5 January 2005, he had further discussed the project with Members on various occasions. CS stressed that it would be more appropriate to await the completion of the public consultation exercise before a decision was taken on the way forward.

15. Ms Emily LAU said that CS had stated in paragraph 4 of his letter dated 17 January 2005 to the Chairman of the House Committee that the Government could adopt various methods to prevent any excessive profiteering by the Proponents, such as by requiring the Proponents to establish a trust fund, to share profits with the Government, or to pay a one-off land premium, in order to support the operation of arts and cultural facilities. Ms LAU considered that LegCo should be involved in deciding on the best option in this regard. Ms LAU further said that if there were alternative arrangements for the project, other consortia whose proposals had not been shortlisted in the first round of screening might be interested.

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16. CS explained that the current Proposals were assessed against the requirements listed in the IFP. Proponents were required to provide information on the estimated amount of money to be invested in the project and the estimated profits to be yielded from the project. If necessary, the Government could require the payment of additional land premium to prevent any excessive profiteering by the Proponents.

17. Ms Emily LAU said that the Administration had refused to disclose the financial information of the screened-in Proposals on the ground that the information was confidential and commercially sensitive, and could not be disclosed without the Proponents' consent. However, the Proponents had indicated on various occasions that they did not object to disclosure of the financial information.

18. CS said that he had undertaken to disclose, subject to the Proponents' consent, all relevant financial information before signing a Provisional Agreement on the selected proposal. Such information would include the three screened-in Proponents' financial proposals submitted to the Government on 19 June 2004, their subsequent revised financial offers, as well as the final financial package of the selected proposal.

19. CS further explained that premature disclosure of the financial information of all the Proponents at this stage would reduce the competition among Proponents and weaken the Government's negotiation position in securing the best possible proposal for the public. This would not be in the public interest to do so.

20. Mr Alan LEONG said that the LegCo Subcommittee on West Kowloon Cultural District Development had held its first meeting on 4 February 2005 and agreed on the scope of its study. Given that the Subcommittee would need time to study the various aspects of the project, it would not be possible for the Subcommittee to complete all necessary studies before the end of the public consultation period on 31 March 2005. Mr LEONG asked whether the Government would agree not to take any irreversible decision on the project before the Subcommittee completed its work.

21. CS assured Members that the Administration was very willing to work with the Subcommittee and provide relevant information on the project. The Administration was open-minded about the need to extend the public consultation period, which would depend on the extent of interest of the public in visiting the exhibitions of the screened-in Proposals and giving comments on the project. CS said that it would be difficult for the Administration to put a halt to all the work relating to the project, given the current momentum generated by the project. He reiterated that the Administration was willing to cooperate with LegCo.

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22. Mr LEUNG Kwok-hung criticised the Administration for not acceding to Members' requests made in the motion passed by LegCo on 5 January 2005. Mr LEUNG said that the Administration had insisted on adopting the canopy design so as to justify the single-development approach and circumvent the normal procedure of seeking LegCo's approval for the project. Mr LEUNG further said that the Administration should not try to use alternative means to gauge public views, since LegCo Members had already given their comments on the project, which represented the majority views of the public. He asked whether CS would accede to LegCo's requests and overturn the WKCD project.

23. CS stressed that a lot of work and consultation had already been done for the project. Developers, the cultural sector and members of the public had also participated actively in the project. It would be irresponsible for the Administration to overturn the whole project at this stage. CS further said that the Administration respected LegCo's views and was willing to cooperate with LegCo. He reiterated that the Administration had pledged to disclose all the financial information on the screened-in Proposals before the signing of the Provisional Agreement. The Administration would also consider extending the public consultation period, if necessary.

24. Mr LEUNG Kwok-hung asked what the Administration's view was, if LegCo resorted to using the powers conferred under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order the Administration to disclose all relevant information on the project, to enable LegCo and the public to know more about the project and be in a better position to assess the screened-in Proposals.

25. CS said that he was not sure whether, and if so, how LegCo would exercise the powers conferred under Cap. 382. CS referred Members to Article 7 of the Basic Law which stipulated that the management, use and development and lease or grant of land were the responsibilities of the Government of the Hong Kong Special Administrative Region. CS further said that there was no question of the Government bypassing LegCo in taking forward the project, since LegCo's approval was not required for the grant of land in this project. CS added that the Government had already consulted LegCo and made special arrangements for public consultation on the project, in order to enlist public support for the project.

26. Mr James TIEN said that while Members belonging to the Liberal Party supported the WKCD project, they had reservations about the canopy design and the adoption of the single-development approach. With the recent improvement in the economy, the single-development approach would not be the best option for taking forward the WKCD development. The Government itself should build the cultural facilities and auction the surrounding land to generate more revenue.

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27. Mr TIEN further said that if the WKCD project was to proceed on the basis of public opinions, the Administration should respect LegCo's views as reflected in the motion passed on 5 January 2005. Mr TIEN asked how the Administration would deal with the situation if members of the public who visited the exhibitions on the three screened-in Proposals held a different view from LegCo Members who were returned by several millions of electors in the third term LegCo elections.

28. Mr LEUNG Yiu-chung doubted whether the Administration would cooperate with the LegCo Subcommittee on West Kowloon Cultural District Development, given that the Administration had refused to accede to Members' requests made in the motion. He asked whether the Administration would really follow the public opinions and overturn the whole project, if the outcome of the public consultation exercise showed that the community was in support of LegCo's views.

29. CS stressed that the Administration respected LegCo and the views expressed by Members. However, as inconsistent requests were made in the respective motions passed by LegCo on 26 November 2003 and 5 January 2005, it was difficult for the Administration to follow up the proposals in these motions. CS reiterated that the requirements set out in the IFP should not be changed in a casual manner. The Administration considered it appropriate to also gauge the public's views on the project, and both the views of the public and LegCo would be given careful consideration. CS added that the Administration had not yet taken a decision on the way forward, and would continue to consult LegCo and the Subcommittee on the project.

30. Mr Ronny TONG said that while Article 7 of the Basic Law provided that the revenues derived from the use or development of land were exclusively at the disposal of the Government, Articles 64 and 73 of the Basic Law stipulated that the Government should obtain LegCo's approval for public expenditure. He further said that by adopting the public-private partnership (PPP) approach for the WKCD project, the Administration would not require LegCo's approval for the development of the land in question. He asked whether the Administration would have to seek LegCo's approval for the expenditure, if the Government sold the land in the WKCD and used the proceeds to build the proposed cultural facilities. Mr TONG further asked whether the Government had sought legal advice on the legality of its approach in taking forward the project, in order to prevent recurrence of The Link Real Estate Investment Trust (REIT) incident.

31. CS responded that it was clear from the Basic Law that the Administration was responsible for the management, use and development of land, while LegCo's approval was required for all expenditure. CS further said that according to the legal advice obtained by the Government, the

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adoption of the PPP approach for the WKCD project was similar to the arrangements for previous projects, such as the container terminal and the Hong Kong Convention and Exhibition Centre, and there was no need for the Government to seek LegCo's approval for the project. Notwithstanding this, the Government still considered it necessary to explain the project to LegCo and the public, and make special arrangements for public consultation on this project.

32. As regards The Link REIT incident, CS said that it was the right of the residents in Hong Kong to seek judicial review of any government policy or decision.

II. Sustainable development

(LC Paper Nos. CB(2) 844/04-05(06) and CB(2) 822/04-05)

33. CS briefed Members on the work of the Council for Sustainable Development (Council for SD), including the formulation of a Sustainable Development Strategy for Hong Kong with the aid of a public engagement process, and the promotion of community awareness of sustainable development through the award of grants from the Sustainable Development Fund (SDF).

34. CS also informed Members that the projects funded by the SDF so far included –

- (a) publicity and community education programmes;
- (b) urban green projects;
- (c) publications on sustainable development; and
- (d) projects to implement Sustainable Community Development 21.

35. As regards the implementation of the engagement process, CS said that the feedback received on the engagement process included suggestions for improvement measures, such as the introduction of mandatory producer responsibility schemes, the use of new treatment technologies to reduce the volume of waste, public education on energy conservation, and the provision of more open space and green areas.

36. CS explained that the engagement process designed by the Council for SD was a new concept in Hong Kong. The engagement process was steered by stakeholders in the various sectors of the community, and the public was consulted on building a suitable strategy for Hong Kong. CS further said that the process would provide a reference for future consultation on topics on

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sustainable development. However, as the concepts of sustainable development and the engagement process were new to Hong Kong, it would take some time to put the concepts into practice and make Hong Kong a more sustainable city.

37. Referring to the recent comments made by local businessmen on the possible candidates, such as CS, for the third term Chief Executive (CE), Ms Audrey EU expressed concern that this might fuel the suspicion about collusion between Government and business, which was not conducive to sustainable development. Ms EU said that given the public concern about the election of CE, constitutional development should be a Priority Area for sustainable development. Ms EU considered that economic development could not be separated from political development, and that the universal suffrage was the key to the development of an equal and fair social system which was fundamental to sustainable development. She suggested that a reasonable timetable for constitutional reforms, including the election method for CE, should be drawn up as soon as possible.

38. CS responded that there had been rumours and speculations about his political career over the past decade. At present, he would only concentrate on the many challenges under his own portfolio, such as the WKCD project. CS agreed that constitutional development was very important, and political stability was conducive to achieving sustainable development. As regards the three Pilot Areas for sustainable development, CS explained that these were the first steps to be taken after the first round of consultation, and the Council for SD would identify further areas through consultation. CS stressed that the Council for SD was steered by stakeholders in the various sectors of the community, and it was for the Council for SD and the community to discuss and determine the scope of sustainable development.

39. Referring to CS's reply to Ms Cyd HO's supplementary question to Ms Emily LAU's oral question at the Council meeting on 9 October 2002, Mr LEUNG Kwok-hung expressed concern that two years had since passed, and constitutional development was still not included in the concept of sustainable development in Hong Kong. Mr LEUNG pointed out that Article 39 of the Basic Law provided that Hong Kong residents should continue to enjoy the rights and freedoms as provided in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Administration should therefore take measures to ensure that such rights were protected. Mr LEUNG added that as the second term of CE would come to an end in about two years, there was urgency to consider the constitutional development in Hong Kong, and this should be included as a Priority Area for sustainable development.

40. CS agreed that there was urgency to consider the constitutional development in Hong Kong, and a Task Force had been set up to study the

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subject. CS further said that it was not possible for sustainable development to embrace all political, economic and social issues. While many issues were related to sustainable development, the Council for SD had selected three Pilot Areas after the first round of consultation. Some other issues not currently identified as Priority Areas could be studied in other contexts outside the Council for SD. As the implementation of the concept of sustainable development was led by the community, it would be more appropriate for the Council for SD to determine its scope of work and set its own pace. CS added that improvements and achievements had been made in the implementation of the provisions in the international human rights treaties, and the issues could continue to be followed up in other forums.

41. Miss CHOY So-yuk declared that she was a member of the Council for SD. Miss CHOY expressed concern that the Wishing Tree in Tai Po and some other valuable old trees in Hong Kong were withering because of the lack of protection. Miss CHOY further said that according to the specialists, these trees could be saved but a large amount of resources would be required. She urged the Government to allocate more resources and introduce legislation to protect and save the trees in Hong Kong.

42. CS explained that Council for SD did not address issues at such a microscopic level. CS further said that protection of trees was the collective responsibility of the community, and there was legislation governing the felling of trees. CS considered that public education would be more effective in preaching the concept of tree protection. He added that the Government would review whether the existing measures for tree protection were adequate, and would further discuss with Members if necessary.

43. Ms Emily LAU said that when the subject of sustainable development was discussed in 1999, she criticised the Administration's narrow definition of sustainable development which did not include constitutional development and human rights. Since then, very few achievements had been made in this respect. Ms LAU expressed concern whether the publicity programmes conducted by the Council for SD were effective, since the public was still not familiar with the concepts of sustainable development. She also expressed disappointment that the Council for SD did not comment on the Hunghom Peninsula incident and the harbour reclamation projects. Ms LAU added that the principles of sustainable development should already have been accepted for compliance by the Government and the community in taking forward large-scale projects.

44. CS stressed that it would take a long time, even generations, to implement the concept of sustainable development. CS pointed out that sustainable development in Hong Kong was led by enthusiastic members of the public, and since sustainable development aimed at long-term benefits, it would take time for the improvements to be seen. CS further said that it was not

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appropriate for the Government to direct the work of the Council for SD, or to ask it to work on political issues or short-term targets. CS added that three Pilot Areas had been identified for the engagement process in building a Sustainable Development Strategy after public consultation, and a report had been provided by the Council for SD. Currently, the Council for SD was deliberating on how to take the process forward to address future topics for sustainable development. The impetus for sustainable development would develop when the majority of the public became more committed to sustainable development.

45. Ms Emily LAU asked whether the three Pilot Areas had been suggested by those government departments which were willing to implement the concept of sustainable development in these areas. She also asked about the number of people consulted on the Pilot Areas.

46. CS said that as he had explained before, the engagement process was developed by the community and could not be directed by the Government. As regards consultation on the Pilot Areas, Assistant Director of Administration (Sustainable Development) 2 said that almost 2 000 responses to the “Invitation and Response” document had been received. About 1 400 people had attended regional workshops and forums, and more than 1 000 copies of summary questionnaires had been completed and returned to the Council for SD.

47. Dr KWOK Ka-ki expressed reservations about the effectiveness of the work of the Council for SD in promoting sustainable development in Hong Kong. He said that vocal green groups and advocates of sustainable development were not represented on the Council for SD. Dr KWOK further said that the implementation of the concepts of sustainable development should be led by CS. However, he did not find that such policy was implemented in the WKCD project and other large-scale development projects. He urged the Government to review the Council for SD’s membership and the direction it took, in order that the Council for SD’s work could more effectively meet public expectations.

48. CS responded that environmental protection activists and grass-roots interests were represented on the various subcommittees under the Council for SD. CS further said that there was public recognition of the work of the Council for SD. Overloading the Council for SD with too many sustainable development topics would hinder its work, and the Council for SD should be allowed time to take its agenda forward step by step. It would not be fair to require the Council for SD to adjust the direction of its work, simply because some people considered that certain issues had not been included in its scope of work. CS added that many of those issues raised by Members were already being dealt with in other forums and other advisory or statutory bodies.

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49. Mr Patrick LAU said that changes in population would have impact on sustainable development. He asked whether the population policy would be one of the subjects that the Council for SD would look into.

50. CS replied that it was for the Council for SD to determine the Priority Areas. He added that the Council would be willing to consider topics suggested by Members.

51. The Chairman said that at the meeting between Members and Heung Yee Kuk Councillors on 25 January 2005, Heung Yee Kuk had raised a concern about the Shenzhen River Regulation Project. The Kuk pointed out that over 10 feet of debris produced by the works of the Project had accumulated along the banks of the midstream and upstream sections of the River in Shenzhen. With no fence or barrier around the debris, the Kuk was concerned that when it rained, the debris would fall into and block the River, and result in flooding in the downstream sections of the River in the New Territories, hence affecting the development in the areas. CS undertook to ask the relevant bureau secretary to follow up the matter.

CS

52. There being no other business, the meeting ended at 3:55 pm.

Council Business Division 2
Legislative Council Secretariat
16 March 2005

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