

立法會
Legislative Council

Paper No. WKCD-297
(These minutes have been
cleared by the Chairman)

Ref : CB1/HS/2/04

**Subcommittee on
West Kowloon Cultural District Development**

**Minutes of twenty-second meeting held on
Friday, 3 February 2006, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Alan LEONG Kah-kit, SC (Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Hon Margaret NG
Hon CHAN Yuen-han, JP
Hon CHAN Kam-lam, SBS, JP
Hon SIN Chung-kai, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Albert CHAN Wai-yip
Hon LEE Wing-tat
Hon Albert Jinghan CHENG
- Member attending** : Hon Martin LEE Chu-ming, SC, JP
- Members absent** : Hon James TO Kun-sun (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LEUNG Kwok-hung
Dr Hon KWOK Ka-ki
Hon CHEUNG Hok-ming, SBS, JP
Hon CHIM Pui-chung
Hon Patrick LAU Sau-shing, SBS, JP

Clerk in attendance : Miss Odelia LEUNG
Chief Council Secretary (1)4

Staff in attendance : Mr Jimmy MA
Legal Adviser

Ms Pauline NG
Assistant Secretary General 1

Ms Anita SIT
Senior Council Secretary (1)9

Ms Sarah YUEN
Senior Council Secretary (1)6

Mr Anthony CHU
Council Secretary (1)2

Ms Michelle NIEN
Legislative Assistant (1)3

Action

I Confirmation of minutes

(Paper No. WKCD-225 -- Minutes of meeting on 15 October 2005
Paper No. WKCD-227 -- Minutes of meeting on 29 October 2005)

The minutes of the meetings held on 15 and 29 October 2005 respectively were confirmed.

II Discussion on the way forward

(Paper No. WKCD-223 -- Letter dated 6 January 2006 from the Administration attaching its press release in response to the Subcommittee's Report on Phase II Study

Paper No. WKCD-226 -- Letter dated 26 January 2006 from the Administration in response to the Subcommittee's invitation to attend its meeting on 3 February 2006

Paper No. WKCD-228 -- Paper on Attendance of Public Officers at meetings of the committees of the Legislative Council)

2. Members noted the following papers tabled at the meeting –

- (a) Letter dated 2 February 2006 from the Chief Secretary for Administration (CS) to the Chairman of the House Committee (HC) elaborating on the Administration's present position regarding the West Kowloon Cultural District (WKCD) project; and
- (b) The Chinese version of WKCD-228.

(Post-meeting note: (b) above was subsequently issued to members vide LC Paper No. CB(1)839/05-06 on 6 February 2006.)

3. The Subcommittee deliberated (Index of proceedings attached at **Appendix I**).

The Administration's refusal to attend the meeting

4. The Chairman advised members that upon the instruction of the Subcommittee, the Clerk had written to the Administration to invite CS and other Government officials to attend the meeting to respond to its two reports and to explain the way forward for the WKCD project. The Administration however advised in its letter dated 27 January 2006 to the Subcommittee (WKCD-226) that the Administration had already responded to the Phase II Report, CS did not see the need for him or the Administration to meet with the Subcommittee at this stage.

5. The Chairman drew members' attention to WKCD-228 on attendance of public officers at meetings of the committees of the Legislative Council (LegCo). The paper was prepared by the Secretariat in response to his request. The paper would facilitate members' discussion on the actions which could be taken to require the attendance of public officers at meetings of the Subcommittee. He also drew members' attention to paragraph 11 of the paper. The Administration had sought to clarify that it was stated in the Administration's letter dated 10 October 2005 that CS would be pleased to hold further discussion with the Subcommittee after studying the Subcommittee's Phase II Report and having formulated more detailed proposals on the establishment of an independent statutory body to take forward the WKCD development.

(Post-meeting note: In a circular multi-faxed to members vide LC Paper No. CB(1)842/05-06 dated 3 February 2006, the Secretariat clarified that paragraph 11 of Paper No. WKCD-228 only recapitulated the contents of the letter issued by the Clerk dated 16 January 2006.)

6. At the Chairman's invitation, Legal Adviser (LA) and Assistant Secretary General 1 (ASG1) briefed members on WKCD-228, in particular the actions the Subcommittee might consider as highlighted in paragraph 14 therein. Some members expressed deep disappointment at the Administration's refusal to attend the meeting. The views expressed by members were summarized as

follows –

- (a) The purpose of scheduling the meeting before the motion debate on the Subcommittee's two Reports on 8 February 2006 was to enable members to participate in the debate after listening to the Administration's response. The refusal of the Administration to attend the meeting defeated the purpose of holding the meeting. It was not clear from the CS's letter dated 2 February 2006 to the Chairman of House Committee whether CS would speak on the motion on 8 February 2006;
- (b) It was the second time CS had declined the Subcommittee's invitation to attend its meetings to respond to its reports, which represented the collective views and considered opinions of various political parties and groups sitting on the Subcommittee. The failure of the Administration to be present at the meeting to explain its position did not help to instill public confidence;
- (c) The Administration claimed that it had already responded to the Phase II Report. However, the said response was only a covering letter enclosing a press release issued to the public by the Administration on the date of publication of the Phase II Report (the press release). The Administration so far had not had any direct dialogue with the Subcommittee on its Reports;
- (d) WKCD was a matter of serious public interest in the disposal of major public resources. To assure the public that the Government was not under undue influence from developers in the disposal of land, CS or his representative(s) should attend meetings of the LegCo to clarify any such queries; and
- (e) The unprecedented refusal to send representatives of the Administration to a committee meeting of the LegCo was worrying as this would adversely affect the relationship between the Legislature and the Executive, and CS, who had long been the bridge between the two, had himself become the subject of dispute.

7. Mr LEE Wing-tat and Ms Emily LAU also opined that the Administration should attend the meeting to –

- (a) respond to members' various concerns and questions, in particular those in relation to requests from screened-in Proponents for variations to the additional development parameters. A list of issues raised by members was in **Appendix II**; and

- (b) seek clarification from the Subcommittee if the Administration had any doubt on the Subcommittee's recommendations.

8. Ms Emily LAU pointed out that CS should be criticized for the non-attendance of the Administration, which had sent a very negative message to the community. She enquired whether the non-attendance of the Administration had contravened Article 62 of the Basic Law, under which the Government should designate officials to sit in on the meetings of LegCo and to speak on behalf of the Government. In reply, LA explained that the Article should be read in context. It was a fact that the Government did not have a seat in LegCo. The Article prescribed as one of the powers and functions of the Government that it could designate public officials to sit in on the meetings of LegCo and to speak on behalf of the Government. It did not impose a constitutional obligation on the Government to the extent that Government must designate public officials to attend all LegCo meetings. However, if the circumstances were such that it would be reasonable to expect the Government to exercise that power and function, the Government should have so acted. It would be a matter for members to consider whether under the circumstances the Government had not acted in accordance with the Basic Law.

9. While agreeing with LA's view, Ms Margaret NG also pointed out that under Article 64 of the Basic Law, the Government must be accountable to the LegCo and it shall answer questions. She reiterated that while the question of whether the disposal of land resources came within Article 73(3) was yet to be addressed, there was no doubt that the Government's policies formulated under, acts done and decisions made pursuant to Article 7 were within the ambit of the scrutiny of the Legislature. Government's duty under Article 64 was therefore a substantive one so as to enable the Legislature to carry out its constitutional functions to raise questions on the work of the Government under Articles 73(5) and (6).

10. Ir Dr Raymond HO pointed out that despite Administration's adoption of the public private partnership (PPP) development mode for WKCD, the Administration should still be required to be accountable to LegCo and the public on WKCD. Moreover, the above requirement should cover not only WKCD but also other PPP projects such as the Shatin Water Treatment Works and the Harbour Area Treatment Scheme.

The way forward

11. Mr LEE Wing-tat, Mr Albert Ho, Ms Emily LAU and Mr Albert CHAN considered it necessary to seek the Council's authorization so that the Subcommittee might order CS to attend the Subcommittee's meetings. Mr LEE further stated that if the Subcommittee could not agree on such a course of action, Members of the Democratic Party (DP) would consider moving a motion to seek the necessary authorization of the Council.

12. In this connection, Mr Albert CHAN pointed out that variations might be made to the additional development parameters in the course of negotiations or exchange of letters between the Government and the screened-in Proponents. He therefore saw a need to compel the Administration to produce the relevant documents under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382). He quoted a number of cases to show how such exchange, if not monitored, could create opportunities for collusion between the Government and developers. In his view, transparency of such exchange was necessary to ensure fairness, especially as CS was a former director of one of the screened-in Proponents' companies.

13. Ms Margaret NG, however, opined that before considering invoking the power to summon the Administration's appearance, the Subcommittee should first consider the following –

- (a) reminding the Chief Executive (CE) of his responsibilities under Article 48(2) to implement the Basic Law which included the proper functioning of the constitutional framework as a whole; and
- (b) collectively expressing disapprobation of the Council as a whole through proposing a motion of censure against CS.

14. The Chairman summed up the points made by members above, and invited members' views on the following –

- (a) Whether the Subcommittee should seek the necessary LegCo authorization to order CS to attend the Subcommittee's meetings, and to bring the consideration of the subject regarding the relationship between the Legislature and the Executive to a higher level, such as the HC, as the matter appeared to be outside the purview of the Subcommittee;
- (b) Whether CE should be reminded of his responsibilities under Article 48(2); and
- (c) Whether a motion of censure should be moved against CS.

15. Mr Albert HO, Mr LEE Wing-tat and Ir Dr Raymond HO considered that the actions in paragraph 14(a) and (b) could be taken in parallel. Ms Margaret NG suggested that the HC Chairman should be requested to write to CE on behalf of the Subcommittee.

16. On the motion of censure against CS, Mr Albert HO opined that this should be the last resort. Mr LEE Wing-tat also opined that this should be discussed after further understanding of the Administration's reasons for the refusal to attend the Subcommittee's meeting. Miss CHOY So-yuk considered this course of action too drastic.

17. Mr Albert HO stated that the issue of the relationship between the Legislature and the Executive was not outside the Subcommittee's purview because it arose from the course of work of the Subcommittee. Ordering the attendance of the relevant public officers before the Subcommittee would facilitate the obtaining of details on the Administration's negotiations with the three screened-in Proponents. He considered that immediate actions should be taken to seek the Council's authorization. Mr Albert CHAN shared his view on the need for immediate action. He reiterated his proposal to order the production of the relevant documents, and said that where necessary, closed meetings could be held to examine such documents. Mr LEE Wing-tat and Ir Dr Raymond HO supported seeking the LegCo's authorization as soon as practicable, so as to prevent the Administration from making any irreversible decision on WKCD before it met with the Subcommittee.

18. Mr Jasper TSANG expressed reservation about deciding on whether to seek the Council's authorization at this meeting as no member of the Liberal Party was present. In view of the significant implications of the decision, it was more appropriate that representatives of all major parties had the chance to express their views. He said that the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) did not want the WKCD project to start afresh. As the Administration would continue with the development of WKCD under the Invitation for Proposals (IFP) framework because all screened-in Proponents had expressed interest in continuing to participate in the WKCD project, DAB considered it necessary to exercise prudence in considering the proposal to invoke the power under Cap. 382.

19. Miss CHAN Yuen-han, Mr CHAN Kam-lam and Miss CHOY So-yuk shared Mr Jasper TSANG's views. Miss CHAN Yuen-han said that the Subcommittee should first discuss with the Administration instead of resorting to invoking Cap. 382. Mr CHAN Kam-lam stressed the importance of partnership and the need to respect the respective roles of the Legislature and the Executive. He considered that the Subcommittee had put forward its recommendations and had done its job. The Administration should be left to decide whether and how the recommendations should be taken on board. Miss CHOY So-yuk suggested that the Chairman should write to CS inviting him to attend a closed meeting of the Subcommittee.

20. While agreeing not to decide immediately on the proposal to seek the Council's authorization at the meeting, Ms Emily LAU emphasized the need for Subcommittee members to stand by the recommendations of the Subcommittee in its reports. Mr Albert CHAN echoed her view, and said that there was consensus on the recommendations reached by the Subcommittee. Ms LAU and Ms Margaret NG also expressed concern that the Administration was paying no heed to the Subcommittee's recommendations, and had evinced the intention to proceed with the Government's set plans regarding WKCD.

21. Mr LEE Wing-tat reiterated DP's stance that, to ensure that there would be open discussion on the way forward for WKCD, Members of DP might seek the necessary authorization to summon CS's appearance without waiting for the Subcommittee's decision if the Administration could not satisfactorily answer at the motion debate members' questions raised at this meeting. Ms Emily LAU said that the decision of whether to seek the Council's authorization should be made by the Subcommittee, and suggested that another meeting should be scheduled to discuss the matter.

22. Mr Martin LEE highlighted the need for the Government to be accountable to the LegCo under Article 64, and urged the Subcommittee to make a decision without further delay. Ms Margaret NG pointed out that it was proper to defer making a decision on the matter after the motion debate so that the Administration's response given at the debate could be taken into consideration and members from all parties and groups would have the opportunity to take part in making a decision on the matter. After discussion, members agreed to schedule a meeting for 10 February 2006, immediately after the fire drill for the LegCo Building to be held after the HC meeting scheduled for 2:30 pm on that day.

23. The Chairman suggested and members agreed that the Chairman should, on behalf of the Subcommittee, write to CS conveying to him views of Subcommittee members on the Administration's refusal to attend this meeting. The Administration should also be requested to provide written answers to members' questions and concerns in advance of the motion debate.

(Post-meeting note: The Chairman's letter was issued to the Administration on 4 February 2006 and circulated to members vide LC Paper No. CB(1)849/05-06 on 6 February 2006.)

24. Regarding Mr Albert CHAN's proposal to order the production of the relevant documents concerning WKCD, LA advised in response to members' invitation that it might be advisable to first follow the normal practice of inviting the Administration to provide the documents first. Mr Albert CHAN, however, expressed concern that the Administration might enter into an agreement with the Successful Proponent if speedy action was not taken to order the production of the relevant documents. To facilitate members' consideration of his proposal, he suggested and the Subcommittee concurred that the Secretariat should research into land disposal cases to illustrate the need for Legislative Council to have access to documentations relevant to issues under its examination.

25. In this regard, Mr Albert CHAN and Ms Margaret NG enquired about the Administration's planned timeframe for assessing the proposals of the screened-in Proponents and awarding the WKCD project to the Successful Proponent. ASG1 confirmed that the Administration had not disclosed details in this regard.

III Any other business

26. Members agreed that the speaking time limits for speakers other than the Chairman during the motion debate should be seven minutes each.

27. The meeting ended at 12:25 pm.

Council Business Division 1
Legislative Council Secretariat
13 June 2006

**Proceedings of the twenty-second meeting of the
Subcommittee on West Kowloon Cultural District Development
on Friday, 3 February 2006, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000054	Chairman	Confirmation of minutes of the meetings held on 15 and 29 October 2005 respectively (Paper Nos. WKCD-225 and WKCD-227 respectively)	
000055 – 000244	Chairman	Opening remarks	
000245 – 001134	Chairman LA ASG1	Briefing by LA and ASG1 on the paper entitled “Attendance of Public Officers at meetings of the committees of the Legislative Council” (Paper No. WKCD-228)	
001135 – 002044	Chairman Mr LEE Wing-tat ASG1 Mr Albert HO	Expression of disappointment at the Administration’s refusal to attend the meeting Emphasis on the need for the Administration to attend the meeting to respond to members’ concerns and questions Indication of support for seeking the Council’s authorization to summon the appearance of the Administration	
002045 – 002838	Ms Emily LAU LA	Expression of disappointment at the Administration’s refusal to attend the meeting Emphasis on the need for the Administration to attend the meeting to respond to various concerns and questions Indication of support for seeking the Council’s authorization	

Time marker	Speaker	Subject(s)	Action required
		Discussion on whether the Administration's refusal to attend the meeting had contravened the Basic Law	
002839 – 004113	Mr Albert CHAN Ms Margaret NG Ir Dr Raymond HO	<p>Expression of disappointment at the Administration's refusal to attend the meeting</p> <p>A member's indication of support for seeking the Council's authorization including ordering production of relevant documents exchanged between the Government and the screened-in Proponents</p> <p>Another member's view that before considering summoning the Administration's attendance, the Subcommittee should first consider the following –</p> <ul style="list-style-type: none"> - Reminding the Chief Executive of his responsibility under Article 48(2) to implement the Basic Law which included the proper functioning of the constitutional framework as a whole; and - Collectively expressing disapprobation of the Council as a whole through proposing a motion of censure against the Chief Secretary for Administration (CS) <p>Another member's view that despite the adoption of the public private partnership (PPP) development mode for WKCD, the Administration should still be accountable to LegCo on WKCD</p>	
004114 – 004804	Chairman	Recapitulation of the points made	

Time marker	Speaker	Subject(s)	Action required
		by members above and invitation of members' views on course of actions to be taken	
004805 – 005709	Mr Albert HO Mr Albert CHAN LA	Members' indication of support for seeking the Council's authorization Expression of views on the actions proposed Discussion on the proposal to order production of relevant documents	
005710 – 010422	Chairman Mr LEE Wing-tat Ms Margaret NG ASG1 LA	A member's indication of support for seeking the Council's authorization, and expression of views on the actions proposed Another member's expression of concern over the Administration's refusal to co-operate with the Subcommittee Discussion on the availability of the Administration's planned timeframe for assessing the proposals of the screened-in Proponents and awarding the WKCD project to the Successful Proponent	
010423 – 011459	Ir Dr Raymond HO Mr Jasper TSANG Ms Emily LAU	Two members' indication of support for seeking the Council's authorization A member's expression of reservation about making a decision in the absence of members of the Liberal Party, and emphasis on the need to exercise care	
011500 – 014140	Chairman Miss CHAN Yuen-han Mr CHAN Kam-lam Miss CHOY So-yuk Mr LEE Wing-tat	Expression of views on whether the Council's authorization should be sought Discussion on the need to defer	

Time marker	Speaker	Subject(s)	Action required
	<p>Mr Martin LEE Ms Emily LAU Ms Margaret NG Mr Albert CHAN ASG1</p>	<p>making a decision</p> <p>Discussion on the need to ensure the Administration would consider the Subcommittee's recommendations</p> <p>A member's emphasis on the need for Subcommittee members to stand by the Subcommittee's recommendations</p> <p>A member's indication of disagreement to move a motion of censure against CS at this stage</p> <p>Members' agreement to take the following actions –</p> <ul style="list-style-type: none"> - Draft a letter to CS conveying views of Subcommittee members on the Administration's refusal to attend the meeting; and - Research into land disposal cases to illustrate the need for Legislative Council to have access to documentations relevant to issues under its examination 	
014141 – 014402	<p>Chairman Miss CHAN Yuen-han Ms Margaret NG</p>	<p>Meeting and motion debate arrangements</p>	

Subcommittee on West Kowloon Cultural District Development

**List of issues which require response from the Administration
for addressing the concerns and questions raised
at the meeting on 3 February 2006**

1. The Administration should articulate its responses in specific terms to the various recommendations of the Subcommittee set out in its Phase I and Phase II reports.
2. The public has the right to know any variations to the additional development parameters and conditions set out in the modified approach announced in October 2005, including any negotiations or exchange of letters between the Government and the screened-in Proponents in clarifying any points of doubt or seeking variations to the development parameters. According to some press reports, some of the screened-in Proponents have requested the Administration to reconsider the following arrangements under the modified approach:
 - (a) adopting a more flexible payment schedule for the \$30-billion trust fund instead of paying the \$30 billion upfront; and
 - (b) using the proceeds from the carved-out portions of the residential and commercial developments at the West Kowloon Cultural District (WKCD) site to subsidize the construction of core arts and cultural facilities.
3. The Administration should confirm whether any negotiations or exchange of letters in respect of the above as well as other aspects of the modified approach will be taken as conditional acceptance on the part of the Government of the terms and conditions under the modified approach.
4. The Administration should advise the public why the screened-in Proponents' queries have not been raised and dealt with before 31 January 2006, and why the Administration allows the Proponents to raise further queries or alternative arrangements after the deadline for response, thereby causing further delay to the WKCD project.
5. As the project involves the disposal of 40 hectares of Government land, the Administration should confirm whether any concession or commitment has been given or made by the Government for any of the screened-in Proponents without the knowledge of the other Proponents and the public,

and whether such concession or commitment is given or made inconsistent with Government's responsibility imposed upon it under Article 7 of the Basic Law.

6. The Administration has indicated that all the three screened-in Proponents have expressed interest in continuing to participate in the WKCD project and the Administration will continue with the development of WKCD under the IFP framework. The Administration should confirm its planned timeframe for assessing the proposals of the screened-in Proponents and awarding the WKCD project to the Successful Proponent, and to what extent the Legislature and the public would be given the opportunity to scrutinize the development arrangements before Government enters into contract with the Successful Proponent. The Administration should explain the necessary statutory and administrative procedures that the Administration will have to follow before entering into contract with the Successful Proponent.
7. The mode of development under the IFP is regarded as an attempt of the Administration to circumvent the powers and functions of the Legislative Council under the guise of a public-private-partnership (PPP) project. However, according to international best practices, the pursuit of any PPP project should be subject to the monitoring of the legislature of the jurisdiction concerned. The Administration should explain how public interest is protected under the PPP approach adopted for the WKCD project.
8. The Administration should explain how it would respond to the findings of the Planning for West Kowloon and the Harbour Front Public Opinion Survey conducted by the Public Opinion Programme of the University of Hong Kong, which shows, among others, that 77% of the respondents object to building a canopy at WKCD.