

WKCD-232

By fax no.: 2524 5695

CB1/HS/2/04
2869 9245
2869 6794
email address: cshiu@legco.gov.hk

4 February 2006

Mr Rafael S Y HUI, GBS, JP
Chief Secretary for Administration
Chief Secretary for Administration's Office
12/F, Central Government Offices, West Wing
Lower Albert Road
Central
Hong Kong

Dear Chief Secretary,

Subcommittee on West Kowloon Cultural District Development

At the meeting of the Subcommittee held yesterday, members have asked me to write to you on their behalf to express their deep disappointment at the refusal of the Administration to attend the meeting which was convened especially to discuss the government's response to the Phase I and II reports of the Subcommittee. We understand that this was your decision and at your instruction.

The Subcommittee was formed by the House Committee to look into a matter of serious public interest in the disposal of major public resources which plainly has far-reaching consequences on nearly every area of public policy. Its ambit spans several panels of the House. It draws its membership from all parties and groups. The reports themselves represent many months of detailed studies and the collective views and considered opinions not only of members but also of numerous groups and individuals from among stakeholders, experts and end-users. They reached remarkable consensus. Strong concerns are expressed and pressing issues are identified, in consequence of which recommendations are put forward. All of them would command the careful response of any accountable government.

We are astonished that the Administration could have taken an attitude of evasion and avoidance under a language of disengagement and unconcern, and moreover evinced the intention to proceed with the government's set plans as if the reports have never come into existence. I regret to have to point out that such a response is as inappropriate as it is unprecedented.

While we do realize that at this stage the Administration may not wish to be confronted in public with a series of tough questions, this is precisely the time these very questions have to be raised. In particular, members would have desired to be informed of the latest development of the project and the government's position in the way forward so as to ensure the most meaningful exchange in the motion debate in the coming LegCo meeting. The absence of the Administration cannot assist public confidence in the SAR Government as a whole. We are also concerned that if the same attitude is maintained in the forthcoming debate, the community will be justifiably scandalized.

Members also desire that I draw your attention to the provisions of the Basic Law regarding the powers and functions of the Legislature and the Executive respectively. In particular, Articles 7, 64 and 73(5) and (6). Even apart from the question of whether the disposal of land resources comes within 73 (3), your policy, acts and decisions pursuant to Article 7 come undoubtedly within the ambit of the scrutiny of the Legislature, and your duty under Article 64 is substantive so as to enable us to carry out our constitutional functions, and not merely formal.

In the circumstances, members are confronted with the unprecedented situation in which the Chief Secretary, by long practice the bridge between the Legislature and the Executive, has become itself the subject of dispute. There is the suggestion that we may have to resort to reminding the Chief Executive of his responsibility under Article 48 (2) to implement the Basic Law which includes the proper functioning of the constitutional framework as a whole; or resort to our power to compel the appearance of witnesses and production of documents under the Legislative Council (Powers and Privileges) Ordinance; or to the collective expression of disapprobation of the Council as a whole. In consideration of the need to give notice to members who were not present at the meeting, we have postponed the decision to the Subcommittee's meeting on 10 February, 2006.

Despite the Administration's existing stance, members very much hope that you will by your positive response before and at the forthcoming debate satisfy the needs of the Subcommittee. As Chairman of the Subcommittee, I strongly believe this will be in the best interest of the community. Meanwhile, members have put forward their questions and concerns in the form of a list of issues as set out in the **Appendix** to this letter, and request that written answers be provided in advance of the debate.

Yours sincerely,

(Alan LEONG Kah-kit)
Chairman of the Subcommittee

Encl

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 \$300-billion trust fund instead of paying the \$300 billion upfront; and
 - (b) using the proceeds from the carved-out portions of the residential and commercial developments at the 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 West Kowloon Cultural District (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.