

For the meeting on 23 March 2005

LEGISLATIVE COUNCIL HOUSE COMMITTEE
Subcommittee on West Kowloon Cultural District Development

West Kowloon Cultural District and Public Private Partnerships

Purpose

This paper addresses Members' enquiries about the West Kowloon Cultural District (WKCD) and Public Private Partnerships (PPPs) set out in the Appendix to the letter of 16 March 2005 from the Clerk to Subcommittee to the Government. It draws reference from Paper No.WKCD-103 (issued via LC Paper No.CB (1) 1090/04-05 on 12 March 2005) on "West Kowloon Cultural District and Public Private Partnerships" to facilitate Members' consideration.

Government's Role and Public Accountability for the Development of Arts and Culture and Hong Kong [item (m)]

2. It is the Government's policy to create an environment which is conducive to the freedom of expression and artistic creation and which encourages participation in all aspects of cultural life.
3. The Government sees its role as a catalyst, promoting and encouraging the development of culture and the arts through the provision of financial support, education, publicity and venues. The Leisure and Cultural Services Department (LCSD), the Hong Kong Arts Development Council (ADC) and the Hong Kong Academy for Performing Arts (APA) are the major executive bodies of the Government in promoting and developing culture and the arts. With Government funding, these organisations perform their functions of developing a dynamic and diverse arts scene in Hong Kong with a view to improving the quality of life of the whole community.
4. Spending of LCSD, ADC and APA is subject to the scrutiny of the Legislative Council. Every year, expenditure of the LCSD is shown in the Controlling Officer's Report whilst the annual report-cum-statements of accounts of ADC and APA are laid on the table

of the Legislative Council.

Funding of the Arts and Cultural Facilities [item (n)]

5. The experience of other countries is that the development and operation of certain arts and cultural facilities may not be profitable. In the development of the WKCD, the Government has decided to adopt an integrated approach by including commercial facilities in the project. As mentioned in paragraph 43 of the Annex to Paper No.WKCD-103, we expect that the private sector, with their business know-how and experience, can develop and operate the whole WKCD in a self-financing mode. This is in line with our policy objective of fostering a partnership between the business sector and the arts and cultural sector in the promotion of the arts, as recommended by the Cultural and Heritage Commission (CHC). The Government believes that the business sector and the arts and cultural sector can complement each other and considers the self-financing mode for the WKCD envisaged by the Invitation for Proposals for the Development of the WKCD (IFP) appropriate. As mentioned in paragraph 82 of the Annex to Paper No.WKCD-103, in the next stage of the IFP process, we may consider measures like: after evaluating the construction costs of the WKCD and operating expenses for 30 years, we could ask the proponent to set up a fund that would operate independently to enhance its support for the operation of arts and cultural facilities; we could ask the proponent to share its profits with the Government so that the Government could use the funds to support the development of the arts and culture or for other social uses; and we could also ask the proponent to pay a one-off land premium sum, which would go into the public coffers. The details will be finalised at a later stage as we shape the WKCD in an evolutionary process permitted by the IFP.

Cost-benefit Analysis [items (d), (e) and (f)]

6. As mentioned in paragraphs 4 and 5 of Paper No.WKCD-103, through the development of the WKCD, the Government seeks to foster a long term relationship between the Government and the private sector in the development of world class arts and cultural facilities, and the provision of high quality arts and cultural programmes by bringing in the private sector's financial strength and commercial knowledge and expertise.

7. The policy objectives of the Government in respect of culture aims to create an environment which is conducive to the freedom of expression and artistic creation and which encourages participation in arts and cultural activities. The Government sees its role as a catalyst and facilitator, promoting and encouraging the development of culture and the arts through funding support and venue provision. As the former CHC's Policy Recommendation Report (2003) has pointed out, the WKCD development presents an unprecedented opportunity for a new horizon of cultural development in Hong Kong, and emphasis should be given to the principles of "people-oriented", "partnership" and "community-driven" in its development. The Government therefore considers it appropriate to encourage the arts community to develop partnerships with the business sector with a view to enhancing community involvement in the planning and operation of the cultural facilities in the WKCD.

8. The Government has adopted a dominant role as a provider in developing the arts in the past. In fact, involvement of the private sector in the operation and management of the cultural facilities in the WKCD is in line with the expressed views of the cultural sector for a more diversified approach in the long term development of arts and culture in Hong Kong.

9. The findings of two consultancy studies commissioned by the Government on the "Provision of Regional/ District Cultural and Performance Facilities in Hong Kong" (2002) and the "Mode of Governance of Hong Kong's Public Museums and the Hong Kong Film Archive" (2003) have also pointed out that partnership between the public and private sector in the development and management of cultural facilities are common in many other cities. If such facilities are not government-run, day-to-day programming, marketing, personnel and other decisions could be made in a flexible manner to enhance efficiency, and the ability to maximise the income generated could also be higher.

10. While the Government will maintain its current level of support in funding the arts, it envisages a new era of partnership with the private sector and the arts community in developing the WKCD, whereby new practices and additional resources can be tapped for betterment of the arts development in Hong Kong.

11. There are intangible benefits to be gained from the fostering of the partnership between the business sector and the arts and cultural sector which cannot be measured by conventional cost-benefit analysis.

Nevertheless, as stated in paragraph 8 of the Annex to Paper No.WKCD-103, the Government continues to endeavor to achieve good value for money under the PPP approach. We took into consideration various studies before the launch of the IFP. We devised the IFP requirements and the assessment criteria in accordance with our policy objectives for developing the WKCD.

12. Before preparing the IFP, the Government has conducted feasibility studies, covering the financial aspects and an assessment of the project's attractiveness to the private sector. The studies are inevitably preliminary as specific features of the WKCD project are being developed and shaped through the IFP process (see paragraph 5 of the Annex to Paper No.WKCD-103). The results of the feasibility studies were considered by the Steering Committee for the Development of the WKCD in February 2003 and March 2003. The Executive Council noted the results of the feasibility studies in June 2003.

13. Going forward, as envisaged in the IFP, we will put in place optimal risk allocation arrangements; maintain a fair, open and competitive bidding process; negotiate with the proponent(s) for the best possible deal; and continue to monitor the private sector's delivery of services (see paragraph 8 of the Annex to Paper No.WKCD-103).

Public Sector Comparators [items (a), (b) and (c)]

14. In accordance with the Introductory Guide to Public Private Partnerships issued in August 2003 (PPP guide), there is no need to construct a Public Sector Comparator (PSC) for the WKCD as the project is to be financially freestanding. As mentioned in paragraphs 64 and 65 of the Annex to Paper No.WKCD-103, the WKCD development process has been carefully crafted to suit the specific circumstances of this unique, large-scale and complex project. Maximum flexibility has been built in the IFP process so as to encourage innovation by the private sector and allow the Government to shape the WKCD in light of assessment findings and public views. The WKCD integrates commercial facilities which are not usually provided by the public sector. These have rendered the construction of any PSC impossible, and indeed irrelevant, at the beginning of the IFP.

15. Nevertheless, the Government has made use of certain reference data for conducting feasibility studies before preparing the IFP and for

assessing the cost and revenue assumptions adopted by the proposals. Such reference data contain inputs from relevant Government departments, and will be revised, enriched and refined as the project evolves in the next stage of the IFP.

16. As for PSC for other projects, the Efficiency Unit advises that preparation of a PSC is not a one-off step. Rather it is a process. During the early stage of preparing a PPP proposal, an initial PSC may be constructed. This may be revisited and refined many times during the preparatory stage as objectives, specifications and market interest evolve and become better understood. The WKCD is not a typical PPP in terms of scale or types of facilities. It is difficult to estimate the time likely to be taken to construct a PSC for a project similar to the WKCD.

17. The Efficiency Unit also advises that, in order to construct an accurate PSC, all the lifetime expenditure and revenue elements of a project have to be identified and costed. Such costing would be on the basis of them being done in-house by the civil service and/or by traditional means of procurement. Inevitably, many lifecycle costs and revenues (which can stretch over a period of 50 years or more) can only be estimated. The PSC will include many cost items, including design, construction, maintenance, staffing, costs not borne by the Government but would be borne by the private sector, financing costs, etc. The specific requirements of the structure and facilities should be available before a reliable PSC can be prepared.

Safeguards and Control throughout the Development of the WKCD [items (g), (h) and (j)]

18. As mentioned in paragraph 60 of the Annex to Paper No.WKCD-103, the Government seeks to achieve optimal risk allocation between the private sector and itself through the IFP process. Possessing market knowledge and expertise, the successful proponent will bear the risks associated with the property market, the construction and the operation of the WKCD. The IFP requires the Government to assess the risk management strategies of the proponents to ensure that the risks will be properly managed and mitigated. As the project evolves, there will be more mature risk assessment and requirements on the shortlisted proponents.

19. We note the advice in the PPP guide that well prepared and

drafted PPP contracts and performance specifications may avoid potential problems. We envisage that, for a unique, large-scale and complex project like the WKCD, specific safeguards and control measures will be included in the Provisional Agreement and thereafter the Project Agreement with the successful proponent, which will be prepared at a later stage of the IFP process when a preferred proposal emerges. Effective checks and balances could be tailor-made for the proposal to ensure satisfactory delivery of the agreed facilities and services over time. As mentioned in paragraph 59 of the Annex to Paper No.WKCD-103, we are shaping the WKCD through the current IFP process, including the assessment of proposals and public consultation. The IFP has already set out a broad legal framework governing the rights and obligations of the selected proponent and the Government. It allows detailed arrangements, including contract terms, land grant conditions, commercial arrangements, performance monitoring, etc. to be shaped and prescribed as the project evolves.

Procedures Adopted for the Development of the WKCD [item (i)]

20. A detailed account of the procedures adopted by the Government for the development of the WKCD has been set out in the Annex to Paper No.WKCD-103. As stated in paragraph 6 of Paper No.WKCD-103, the development process of the WKCD complies fully with the guiding principles set out in the PPP guide. In line with the PPP guide, the development process has been carefully crafted to suit the specific circumstances of the WKCD.

Further Processes in the Later Stages [item (k)]

21. The Efficiency Unit confirms that the development of the WKCD has been planned and processed in conformity with the PPP guide. The Government will continue to have due regard to the PPP guide in future phases of the IFP process.

Multiple-level Bidding [item (o)]

22. Flexibility is provided under the IFP for the successful proponent to subcontract works through open bidding. We will keep an open mind as to whether, and if so, how this should be provided for in the

Provisional Agreement and Project Agreement with the successful proponent, subject to assessment findings and public views.

Submissions from the Hong Kong Institute of Surveyors [item (p)]

23. As stated in paragraph 6 of Paper No.WKCD-103, the development process of the WKCD complies fully with the guiding principles set out in the PPP guide. In line with the PPP guide, the development process has been carefully crafted to suit the specific circumstances of the WKCD. As for the submissions from the Hong Kong Institute of Surveyors, we are now consulting the public on the project and keep an open mind when listening to views. We are grateful for the suggestions of the Hong Kong Institute of Surveyors. We will take full account of public views, including those from the Institute, when considering the way forward. We would refrain from pre-empting any public views before the completion of the consultation exercise.

Information Note prepared by Legislative Council Secretariat [item (q)]

24. The Abandoibarra Project and the WKCD have taken different development approaches. For the development of a museum cluster, the WKCD approach has the following advantages -

- (a) individual museum premises can be designed in a harmonious and unified manner within the museum cluster;
- (b) some core facilities and services such as conservation, design, security, cleaning, etc. of different museums can be shared and economy of scale can be achieved;
- (c) better coordination between museums in programme organisation, utilisation of resources and sharing of staff and expertise;
- (d) less administration cost with shared head office;
- (e) construction period for the museums can be shortened;

- (f) coordination of development for individual museums can be ensured; and
- (g) no counter-productive competition between museums in acquisition and programming.

25. As regards the performance venues to be built in the WKCD, similar advantages such as complementing facilities, sharing of resources, economy of scale and coordinated management can be achieved under the WKCD approach.

26. Regarding the mode of governance for arts and cultural facilities, we require that such facilities should be able to promote the long term cultural development of Hong Kong, attract support from various sectors and the community at large, and provide opportunities for the public to participate. We believe that a governance structure which is transparent, sustainable and accountable to the Government and the public is crucial to the effective operation of arts and cultural facilities.

27. In fact, there are many possibilities to operate arts and cultural facilities (such as trust fund, foundation, non-profit-making companies, etc). Different facilities can also have different modes of operation. We are open to views and suggestions made by the public in this regard.

28. While making reference to successful cases in other countries, we must bear in mind that the historical, economic and social background between different places might be different. We should aim to identify an approach that is the most applicable and suitable for the long term arts and cultural development in Hong Kong.

29. In general, the WKCD approach can enhance coherence in planning and coordination, increase the efficiency of governance, save cost and shorten the development period. As an integrated arts, cultural and entertainment district, we consider the development approach put forward in the IFP the best option for realising the WKCD project.

AsiaWorld-Expo, Hong Kong Science Park and Railway Development [item (1)]

AsiaWorld-ExPo at the Hong Kong International Airport

30. The AsiaWorld-Expo (AWE) is jointly financed and owned by three entities, namely the Government, the Airport Authority (AA), and a private-sector consortium selected through competitive international tendering. The selected private-sector consortium is required to finance part of the project cost of the AWE, and is also responsible for the design, construction, management and operation of the AWE in accordance with the terms laid down in the various contracts entered into between the relevant parties. As regards returns, any surplus of income above the preferred return to the private-sector consortium will be distributed among the parties according to their equity stake in the joint venture, but the private-sector consortium will have to re-distribute half of its share in this second slice to the Government and the AA in accordance with their relative equity shareholdings. At the end of the 25-year franchise period, the Government and the AA will share the reversionary value of the facility in accordance with their relative equity stakes.

Hong Kong Science Park

31. The Science Park is part of our technological infrastructure to help Hong Kong industries move up the technological ladder. Construction of the Science Park Phase 1, which started in 1999, was put under the Public Works Programme and undertaken by the Architectural Services Department. In 2001 the Hong Kong Science and Technology Parks Corporation (HKSTPC) was established. As the owner of the buildings and physical facilities in the Science Park with responsibility over management, maintenance and marketing, the HKSTPC undertakes the planning and construction of Phase 2, with part of the funding met by its internal resources and part provided by the Government in the form of equity and loan from the Capital Investment Fund to the HKSTPC.

Railway Development

32. At present, railway projects in Hong Kong, which are considered necessary and justified on transport grounds by the Government, are undertaken by either the MTR Corporation Limited or Kowloon-Canton Railway Corporation. These railway corporations, possessing the relevant experience and expertise, are responsible for the design, construction, operation and maintenance of the railways. Depending on the specific circumstances of individual railway projects,

they are financed by internal resources of the railway corporations, commercial borrowing by the railway corporations and equity injection from the Government, or, if necessary, other financial arrangements agreed with the Government.

Public Sector Comparator

33. No PSC has been constructed for the above projects.

**Housing, Planning and Lands Bureau
Home Affairs Bureau**

21 March 2005