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BY FAX & BY HAND
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12 September 2005

Clerk to Subcommittee
Legislative Council Secretariat
3rd Floor, Citibank Tower
3 Garden Road
Central
Hong Kong

Attn: Ms Christina Shiu

Dear Sir

Subcommittee on West Kowloon Cultural District Development

I refer to your letter dated 5 September 2005. Thank you for inviting our Institute to present our views on the WKCD project. In this regard, we have pleasure in enclosing our written submission for the Subcommittee's consideration.

Please be informed that our Chairman of the WKCD Working Group, Dr Paul H K Ho and I will attend the meeting on 13 September 2005.

Thank you for your kind attention.

Yours faithfully

T T Cheung
President (2004-2005)

TTC/my

Encl.

West Kowloon Cultural District (WKCD) Development

Introduction

1. In response to the LegCo's invitation letter dated 5th September 2005, the Hong Kong Institute of Surveyors (HKIS) would like to give its views on the Subcommittee's Report on Phase 1 Study as well as on some unresolved issues relating to the captioned project. In general, HKIS finds that the Subcommittee's Phase 1 Report is very thorough and comprehensive. In particular, HKIS is pleased that many of our views relating to good professional PPP practices have been considered and reflected in the Subcommittee's report. In this paper, HKIS would like to give our views relating to the management structure, software and hardware cultural facilities, development approach and financial arrangement as follows:

Management Structure

2. For any capital intensive projects, there is normally a governing body or management organisation accountable for the implementation. As pointed out in our 4th submission dated 23rd March 2005, there is a wide variety of organisation structures for publicly funded museums, galleries and theatres. It can be either (1) under the line management of the Government, (2) a non-statutory advisory board established out of the Government structure, or (3) an independent statutory organisation.
3. Currently, the operation of all local public museums is under the direct line management of the Leisure and Cultural Services Department. If the same management structure is to be used for the WKCD, "the outcome would resemble that of Hong Kong Cultural Centre and community hall¹". Indeed, modern management of arts and cultural facilities is moving towards community-centred (rather than bureaucratic) approach for catering the changing community's needs². It would thus be better to keep the WKCD organisation³ out of the Government structure. If the WKCD organisation is to own all valuable public assets of the WKCD including its properties, art collections and fiduciary interests, it should be

¹ Paragraph 37, Speech by the Chief Secretary for Administration on the motion on West Kowloon Cultural District Development Project in the Legislative Council on 26th November 2003.

² Consultancy Study on the Mode of Governance of Hong Kong's Public Museums and the Hong Kong Film Archive.

³ It can be a WKCD board, corporation or authority, depending upon its powers and functions; but in this paper, a more generic term "WKCD organisation" is used.

backed up with legislation (i.e. a statutory non-profit making organization) governing its vision, objectives, powers and certain principles in operations. Nevertheless, a statutory organisation can be structured in different ways. For instance, in the case of the Hong Kong International Airport, there is one independent governing body to oversee the project from its planning, design and construction through to operational and management stages. Even with a single governing body, there can also be different management structures and functions, depending on its powers conferred by its legislation. For instance, the former Land Development Corporation is different from the current Urban Renewal Authority. On the other hand, with the world-famous Guggenheim Museum at Bilbao in Spain, there are two separate but closely coordinated governing bodies; one for the planning, design and construction and the other for its subsequent long-term operation. Commonly found in nearly all projects, the (project) management structure at the design and construction stage is only temporary, whilst the management structure at the operational and management stage is rather permanent.

4. If the public private partnerships approach is to be used in the WKCD project as strongly advocated by the Government, the WKCD organisation structure can be relatively slim as most works (i.e. design, construction and day-to-day operation) will be undertaken by the private partner. Under such an arrangement, the WKCD organisation is to principally take up a monitoring role, rather than the direct execution of the project (like the Airport Authority, KCR and MTR Corporations which require a huge organisation structure).
5. Any formal organisation should have its governing board. Based on the “partnership” and “community-driven” principles, it is the HKIS’s view that the governing board of the WKCD organisation should comprise three types of membership, namely (1) Government representatives, (2) experienced professionals and representatives from the property development and management sector as well as the arts and cultural sector, and (3) the public represented by persons with high standing in the community. All of them should be publicly accountable. Under the main governing board, expert advisory boards, where necessary, can be established for each type of cultural facilities. External consultants may also be appointed to assist the governing board in delivering its duties, particularly in monitoring and benchmarking the quality of cultural facilities provided by the private partner.

6. Unlike a completely new project, the WKCD project has started for some years under the direct management of the Government. Under such a particular situation, whether it is appropriate to set up an independent WKCD organisation at the present stage as advocated by some organisations must be carefully considered. In this regard, HKIS would like to point out that an independent WKCD organization, if established at this crucial stage, would not by itself resolve all deficiencies in the planning and development process as identified in the Subcommittee's Report on Phase 1 Study. Rather, it may materially disturb and delay the planned progress of the WKCD project as the newly established WKCD organization may have to start the project from scratch. It must be noted that there is overwhelming support from the community for the WKCD project. "If the whole WKCD project is to be re-planned from scratch, it may take the Government a few years" thus bringing "uncertainty to the whole project"⁴ as previously expressed by the Government.

7. In addition, HKIS would also like to point out that the relevant legislative procedures for the formation of a statutory WKCD organisation would take considerable time. In particular, the relevant legislation would not normally be supported by the Legislative Council until most critical issues such as the viability studies of various cultural facilities, development strategy, funding arrangement, disposal of the 40-hectare land, etc. have been satisfactorily resolved by the Government. There is a high possibility that the WKCD project would be substantially delayed, even without having to start from scratch again. Therefore, it would simply be a political decision if the formation of a new WKCD organisation was to take up all problems previously created by the Government. In fact, if everything was left to the new WKCD organisation to decide, this would likely result in "a start from scratch". More undesirably, once a statutory WKCD is approved being formed, it could be more difficult for the public and LegCo to monitor how this independent organisation runs the WKCD. There could be limited, or even no more, public consultation. All would depend on its governing board members controlled by the Government through their appointment.

8. There has seldom been a complete change on the project management structure for any major Government projects in the middle of its implementation stage. Also as a matter of principle, the Government should retain its full responsibility to ensure the materialization of the WKCD project in any event. In light of the aforesaid

⁴ Paragraph 13 of the Paper No. WKCD-91 Land Use and Planning submitted by the Housing, Planning and Lands Bureau in February 2005

situations, HKIS would suggest that an independent statutory WKCD organisation should only be formed for its operational and management stage. In order to regain the Government's credibility from the public, the "Steering Committee for Development of the WKCD" with the Chief Secretary for Administration, Secretary for Housing, Planning and Lands and other original members should continue to assume their responsibility for the WKCD project at least until its operational and management stage, notwithstanding a provisional WKCD organisation (if any) may be established some time later.

Software and Hardware Cultural Facilities

9. Since the Government has been actively promoting the WKCD which would enrich the cultural life of the local people and contribute to cultural tourism, it is not surprising that different arts and cultural groups may have different interests and expectations on the WKCD. In particular, they would expect that much needed cultural facilities and exhibition space could be provided in the WKCD for cultivating local talents. Based on a clear vision for the WKCD to position itself as a world-class arts, cultural and entertainment district, the Government should strike a balance between international events and local arts community's needs⁵. In this regard, the Government should ensure that the WKCD would not become another Hong Kong Cultural Centre or just other local community hall.
10. Apart from various formal and informal consultations, the Government has conducted some studies directly and indirectly relating to the WKCD such as the "Study on the Feasibility of a New Performance Venue for Hong Kong (1999)", "Cultural Facilities: A Study on their Requirements and the Formulation of New Planning Standards and Guidelines (1999)", "Consultancy Study on the Provision of Regional/District Cultural and Performance Facilities in Hong Kong (2002)" and in particular, the "Culture and Heritage Commission Policy Recommendation Report (2003) which generally supported the version of the WKCD project, while there are certain inadequacies in its detailed planning.
11. It is noted that the three short-listed proponents had spent huge resources in carrying out the relevant studies and preparation of their technical and financial proposals and the Government had undertaken an extensive public consultation on those screened-in proposals during the past months. As mentioned in our 2nd

⁵ The Government should also study whether those reasonable demands from various arts and cultural groups could possibly be incorporated somewhere, if not in the WKCD.

submission dated 31st January 2005, after reviewing the three submitted proposals, the Government should be in a position to determine the core cultural facilities that would achieve the vision of the WKCD. The revised scheme (in respect of its cultural software and hardware contents) could be formulated by mixing the best ideals/proposals submitted by the three proponents and also taking into account of public opinions, particularly the arts and cultural sector. Whilst there may be some contractual issues in respect of the originality of ideals to be resolved, these are however not impracticable to be resolved in view of the commercial goodwill of all parties. The Government would then have a high degree of control over various software and hardware cultural facilities. Finally, the revised scheme (both software and hardware) should be subject to a further round of public consultation.

12. As mentioned in our 4th submission dated 23rd March 2005, the success of a cultural project may depend on two major factors. For instance, in the case of Guggenheim Museum Bilbao, the first factor is the hardware facilities – a world-famous landmark building designed by a renowned architect, and the second factor is the software facilities – some high-quality arts programmes managed and operated by an internationally experienced museum operator. HKIS would recommend that the Government should observe and follow these successful factors in the WKCD.

Development Approach⁶

13. In our 1st submission dated 13th February 2004, HKIS strongly objected to the single-package development approach and also expressed a number of concerns arising from the single-package arrangement. In order to avoid the single-package approach, HKIS would suggest that the development of the 40-hectare site be divided into two main parts, namely (1) arts and cultural facilities which are integrated with certain supporting commercial facilities and (2) those commercial and residential developments not necessarily directly related to the core arts and cultural facilities.
14. In order to carve up the site for various land-use purposes, the Government should draw up an overall master layout plan for the WKCD. Land is a valuable resource in Hong Kong and should neither be under-utilized nor over-utilized. Thus, the

⁶ The development approach should be considered in conjunction with the financial arrangement as these are inter-related issues.

Government should also justify and determine the optimal plot ratio and other planning parameters for each individual lot within the WKCD, rather than subject to proponent's suggestion on the basis of self-financing principle that should never have been accepted from the planning point of view. The finalized master layout plan should be subject to the normal town planning approval process.

Development of Cultural and its Supporting Commercial Facilities

15. For the development of cultural facilities within the WKCD, it is noted that various previous studies has consistently recommended partnerships with the private sector. For instance, the "Study on the Feasibility of a New Performance Venue for Hong Kong (1999)" recommended that the performance venue should be operated on commercial principles. The Planning Department Study (1999) also recommended greater private sector participation for the development of the new cultural facilities. The "Consultancy Study on the Provision of Regional/District Cultural and Performance Facilities in Hong Kong (2002)" similarly stated that the participation of the private sector through joint initiatives such as public private partnerships should be encouraged. The "Culture and Heritage Commission Policy Recommendation Report (2003)" also clearly recommended that the Government should facilitate partnerships between developers and the cultural sector in the development and operation of the cultural facilities. As stated by the former Chief Secretary for Administration, "in the past, the Government constructed a lot of cultural facilities. However, without a business mindset, these facilities are somehow inadequate in themselves⁷." "The objective of the WKCD project is to foster a long-term relationship between the Government and the private sector in the development of world-class arts and cultural facilities by bringing in the private sector's financial strength and commercial knowledge and expertise⁸". As stated in our previous submissions, HKIS also supports the Government's plan to engage the private sector in the development of the WKCD. Therefore, the PPP approach should be adopted unless the Government has good reasons to change at this stage.

16. In our past submissions, HKIS had given plenty of practical advices on good PPP practices (including the preparation of a sound business case, value-for-money

⁷ Paragraph 34, Speech of the Chief Secretary for Administration on the motion on West Kowloon Cultural District Development Project in the Legislative Council on 26th November 2003.

⁸ Paragraph 14 of the Paper No. WKCD-103 West Kowloon Cultural District and Public Private Partnerships jointly submitted by the Housing, Planning and Lands Bureau and Home Affairs Bureau in March 2005

assessment, public sector comparator, clear outline specifications, affordability, etc.) which were also reflected in the Subcommittee's Phase 1 Report⁹. The Government should formulate a publicly accepted scheme in respect of its cultural software and hardware as aforesaid. All proponents, which should not necessarily be limited to the original three proponents, should be requested to comply (or match) with the defined scheme so that there would be an equal basis for comparing each offer, including the associated commercial developments. As can be found in other long-term PPP projects, provisions should be allowed for changes or modifications of software and hardware contents to cater for changing community's needs from time to time.

17. Depending on the master layout plan as to whether various cultural facilities could be dividable in respect of its design and construction, and also in consideration of the operational needs that different cultural facilities would require different types of operators, multi-package approach may be considered so as to allow more than one private partner to participate in the development of cultural facilities if this could facilitate keener competition and larger overall financial benefit. While some organisations advocate an incremental approach, this is considered to be unnecessary as all cultural facilities should be started and completed according to the original programme as far as possible. Indeed, the design of all public arts and cultural facilities should cater for changing community's needs in the long-term.

Development of Remaining Commercial and Residential Properties

18. For the remaining commercial and residential portion within the WKCD, the relevant lands can be carved into several smaller lots according to the overall master layout plan so that medium-sized developers would also be able to participate in the development. In order to achieve an integrated development with its surrounding cultural facilities, detailed planning parameters should be specified for each lot, including a requirement for any development to be strictly in compliance with the overall master layout plan. Each lot can be disposed by means of public auctions and/or joint-venture development schemes, depending whether these lots would also be owned by the Government or the future WKCD organisation.

⁹ For this reason, HKIS would not mention these good PPP practices in this paper again.

Financial Arrangement

19. In our previous submissions, HKIS clearly pointed out that the WKCD is not financially free-standing and may require cross-subsidies through the property development on this 40-hectare land. This view is shared by the Subcommittee. In order to assess an affordable and justifiable amount of subsidy and also to determine how additional funding is injected in the WKCD organisation, it is necessary to firstly consider the financial commitment in the provision and operation of all cultural facilities (i.e. the expenditure side) as well as the possible income generated from the cultural facilities itself, associated commercial activities and commercial property development within the WKCD site (i.e. the income side). As a matter of general principle, the Government (or the WKCD organisation) should try to minimize the expenditure and maximize the income as far as possible in order to reduce the amount of subsidies from taxpayers. As suggested in our 3rd submission dated 16th March 2005, the Government should at last prepare a cost-benefit analysis for the overall (if not individual) facilities within the WKCD.

Income from Cultural and its associated Commercial Facilities

20. It is noted that most museums and galleries in the world cannot be self-financing due to its large capital and operational costs. Perhaps for this reason, there is growing trend that they generate income from various sources including not only admission charges but also other trading activities. For instance, according to the “Income generated by the Museums and Galleries (2004)” published by the National Audit Office in the United Kingdom, “the Department for Culture, Media and Sport provides annual grant-in-aid funding to 17 non-departmental public body museums and galleries which in 2002-03 totalled £270 million. The museums and galleries also generate income themselves from fundraising, trading activities and admission charges. This self-generated income amounted to £108 million in 2002-03 (P.1)”, representing 40% and 28.6% of its grant-in-aid funding (£270 million) and total annual expenditure (£378 million) respectively. Therefore, the self-generated income becomes an important element in the modern management and operation of museums and galleries.

21. For the cultural facilities within the WKCD, there should be more room to generate income from various commercial activities as much more shopping and entertainment areas are integrated with various cultural facilities as observed from the proposals submitted by the three proponents. As stated by the former Chief

Secretary for Administration, “the business community knows how best to make commercial profits from the facilities and attract people to the place¹⁰”. There should be a breakthrough in respect of the design, funding and operation of cultural facilities in Hong Kong. Thus, HKIS would support the Government’s previous decision to engage the private sector in the operation of the WKCD. The private partner operates the cultural and associated commercial facilities in a business-like manner, whilst the Government shares the commercial benefit which is used to support the non-financially visible museums and galleries within the WKCD. In addition, if the PPP approach is used, the private partner will normally finance all capital costs of the project, while the Government will only be required to pay the service charges during the operational stage. There will be no burden for the Government to allocate a huge capital budget during the development stage.

Income from Commercial and Residential Development

22. Even the cultural and its associated facilities within the WKCD are operated on commercial principles as aforesaid, it is not likely run on a truly self-financing basis and thus additional funding may be required. In this regard, the simple approach is to sell land within the WKCD by means of public auction and other disposal methods¹¹, and revenue from these land sales is to make up the deficit of the WKCD organisation up to a pre-agreed budget ceiling. It must be noted that unless the relevant land is agreed to be assigned to the WKCD organisation, revenue from the sale of any public land will become public money to be allocated under the normal “resources allocation exercise”. The Government has to face a challenge why a large amount of public money will be spent in the WKCD and not in other public services which may be in a greater demand by the society.
23. The second approach is to let the WKCD organisation generate income from the property development of lots in conjunction with developers through joint venture methods. It is noted that nominal (or no) premium is required for public projects, but full market premium is normally required for any commercial development (like the residential development above the depot or station of KCRC and MTRC). Under such an arrangement, there will be no subsidy of public money as the joint-venture developers will have to pay the land premium at the full market value. Therefore, HKIS would support this financing approach. By contributing the land development right, the WKCD organisation will share profit with the developers

¹⁰ Paragraph 36, Speech of the Chief Secretary for Administration on the motion on West Kowloon Cultural District Development Project in the Legislative Council on 26th November 2003.

¹¹ This financial method was also in the world-famous Guggenheim Museum in Spain.

from the relevant property development within the WKCD. However, the exact amount of profit that can be generated is uncertain, all depending on the future property market.

24. If all incomes generated from the above sources are still inadequate to cover for the capital and operational cost, the Government has to inject public money into the WKCD organisation from time to time or in one-off manner. In any event, the relevant capital and operational budget should be carefully scrutinized (including the expensive canopy). The Government should strike a good balance between the potential benefits (both financial and non-financial) to be gained from the WKCD and the social affordability.

The Hong Kong Institute of Surveyors

Submitted for the LegCo Meeting on 13 September 2005