

**Legislative Council Subcommittee on
West Kowloon Cultural District Development**

**Key Aspects of the Proposed Legislation for
Establishing a Statutory Body**

Purpose

This paper sets out the key aspects of the proposed legislation for establishing a statutory body to take forward the West Kowloon Cultural District (WKCD) project.

Background

2. In its Recommendation Report submitted to the Chief Executive (CE) in June 2007, the Consultative Committee on the Core Arts and Cultural Facilities of the WKCD (the Consultative Committee) recommended that the Government should proceed to draw up the requisite legislative proposals for setting up a statutory body as soon as practicable to take forward the project. The Recommendation Report also outlined the Consultative Committee's recommendations on the objectives, powers and functions, etc., of the statutory body.

Timeline for Establishing a Statutory Body

3. We are currently conducting a public engagement (PE) exercise on the recommendations of the Consultative Committee. The PE exercise will be completed in mid December. The public views received so far indicate that the stakeholders and the community are generally supportive of the recommendations, and should like to see the implementation of the WKCD project as early as possible. We will thus proceed with the legislative process for establishing a statutory body to take forward the project as quickly as possible. Accordingly, we are planning to introduce a bill on the establishment of a statutory body to the Legislative Council

(LegCo) in February 2008. If the bill is passed by mid 2008, the statutory body would be set up later in the year.

Key Aspects of the Proposed Legislation

4. We have commenced drafting of the bill and have identified certain key aspects of the proposed legislation. They include the statutory body's purposes and objects, powers and functions and composition, as well as other related aspects such as financial arrangements, land matters, public accountability and consultations. They are outlined in the ensuing paragraphs.

Purposes and objects

5. The WKCD project is a major initiative to implement the Government's existing policy on culture and the arts, by meeting the long-term infrastructural and development needs of Hong Kong's arts and culture. It should also contribute to the development of Hong Kong into an international cultural metropolis. In this connection, we propose that the statutory body, with WKCD Authority (WKCDA) as its working title, should have the following key purposes and objects in carrying out its functions -

- (a) to develop and manage an integrated arts and cultural district to facilitate the broad development of culture and the arts in Hong Kong, with a view to improving the quality of life of the whole community, attracting local residents and visitors outside Hong Kong and building up Hong Kong as an international cultural metropolis, contributing to the long-term development of Hong Kong into an international arts, cultural and entertainment hub;
- (b) to facilitate the provision of quality arts and cultural facilities and services;

- (c) to promote and provide for the appreciation of and participation in culture and the arts and enrich the cultural life and meeting the needs of the local community;
- (d) to foster and promote the development of cultural and creative industries; and
- (e) to strengthen Hong Kong's position as a premier tourist destination.

Powers and functions

Scope

6. The WKCDA would be responsible for managing an integrated arts and cultural district occupying an area within the boundary to be designated for WKCD under the South West Kowloon Outline Zoning Plan (OZP). The facilities under its purview would include the arts and cultural facilities and other related facilities such as public open space, public car parks, automated people mover (if any) and retail/dining/entertainment (RDE) facilities in the WKCD, as well as any storage facility and conservation laboratory and interim museum facility (with interim M+ as working title) outside the boundary of the WKCD in Hong Kong.

7. The other transport and communal facilities (e.g., public pier, fire station, police post, electricity substation, etc.) and engineering works in the WKCD should be provided and maintained by the Government and the relevant utilities companies (with flexibility for the Government to entrust these works and functions to the WKCDA). The commercial sites for office and hotel development as well as the residential sites within the WKCD should be disposed of by the Government to private developers under the normal land sale mechanism subject to the prevailing housing and land policy and thus would not be included in the powers and functions of the WKCDA.

Planning, design, development and operation

8. The WKCDA would be tasked to be responsible for the planning, design, development, operation, management and maintenance of the facilities under its purview. The WKCDA should undertake these tasks either by itself or through other arrangements with private or non-government organisations' involvement, in a financially sustainable manner. The proposed key powers and functions of the WKCDA in these aspects would include-

- (a) drawing up a master plan for the whole WKCD area within the boundary designated for the WKCD under the OZP in consultation with the Government and subject to any conditions determined by the Government, for approval by the Town Planning Board (TPB) under the Town Planning Ordinance (TPO). The master plan should cover not only the facilities under the WKCDA's purview but also other transport and communal facilities as well as residential, office and hotel facilities, in accordance with the requirements and parameters to be included in the OZP;
- (b) undertaking detailed planning, designs (including design competitions for some of the arts and cultural facilities) and construction of the facilities under its purview;
- (c) operating, managing and maintaining the facilities under its purview (including other transport and communal facilities and engineering works through agreements with the Government or other relevant parties) either by itself or through contractual arrangements with other parties. The RDE facilities should be operated under prudent commercial principles;
- (d) establishing committees, management companies, incorporated companies, subsidiary companies, trusts or other non-profit organizations as in the opinion of the

WKCDA are suitable to facilitate the attainment of its purposes and objects;

- (e) controlling and managing the financial resources with due care and diligence to ensure the financial sustainability of the facilities under its purview;
- (f) implementing proposals for the planning, development, promotion and support of the arts and cultural activities for its purposes and objects;
- (g) employing staff, advisors and consultants and set terms of remuneration and conditions of their employment;
- (h) commissioning works of any form of the arts and presenting any exhibitions, dramatic, musical, dance, film or arts productions;
- (i) liaising and collaborating with persons, companies, organizations and associations in and outside of Hong Kong for the purposes and objects of the WKCDA;
- (j) fixing and collecting fees, subscriptions and charges and specifying conditions for the use of facilities and services provided in the WKCD. The fees and charges would include, amongst others, hire charges and admission charges of the arts and cultural venues, ticketing services, transport fares, etc; and
- (k) making bylaws (subject to LegCo approval) for executing its functions as necessary.

Financial arrangements

9. The Consultative Committee has recommended a prudent and transparent financing approach for the development and sustainable operation of the WKCD. Under the recommended financing approach, the Government would provide an upfront endowment, to be appropriated by the LegCo, to the WKCDA in order to finance the capital costs of the facilities under the purview of the WKCDA. The RDE facilities would be managed

by the WKCDA which may sublet the spaces to other parties and the income so generated would be used to cover the operating deficits of the facilities under the WKCDA's purview. The proposed key financial arrangements would include-

- (a) The financial resources for the WKCDA would comprise the upfront endowment, any investment income and operating surplus, including that from the RDE facilities, any other money that may be paid by the Government (including by way of loans) as well as all other money and property, including gifts, donations, fees, rent, sponsorships, interest and accumulations of income received by the WKCDA for its purposes and objects;
- (b) The WKCDA may hold and manage the financial resources and other assets for the purposes and objects of the WKCDA;
- (c) The WKCDA would need to oversee and manage the finances of the WKCD with due care and diligence and ensure the financial sustainability of the development and operation of the arts and cultural facilities and all other facilities under its purview;
- (d) Investment of any unused funds of the WKCDA should be undertaken in a financially prudent manner. The WKCDA may invest available funds in such classes or descriptions of investment as the Government may specify. The WKCDA may establish an investment committee and employ financial advisors;
- (e) The WKCDA should also be allowed to borrow money from the Government or raise finances from other sources. However, any borrowing above a specified amount would not be allowed without the Government's approval; and

- (f) The WKCDA may establish and maintain reserve funds.

Land matters

10. The WKCD area will comprise arts and cultural facilities, commercial (including RDE, offices and hotels) and residential facilities as well as transport and communal facilities. The Consultative Committee has recommended that the land for residential, office and hotel uses within the WKCD should be disposed of by the Government under the normal land sale mechanism subject to the prevailing housing and land policy.

11. The Government may grant to WKCDA by way of private treaty grants the land in the WKCD for developing and operating the WKCD (excluding the land for residential, office and hotel uses which should be disposed of through normal land sale) in accordance with the purposes and objects of the WKCDA, and subject to any other terms and conditions imposed by the Director of Lands. The Government will decide on the extent of the land that should be granted once the master plan has been approved, taking into account factors such as the disposition of the various facilities in the WKCD and their interface with facilities near the WKCD or existing facilities within the WKCD. During the master planning stage, the WKCDA may, if necessary, seek permission from the Lands Department for access to the WKCD site, e.g., for conducting site investigations.

12. The WKCDA should be required to use the land granted to it for purposes and objects specified in the WKCDA Ordinance and in accordance with the master plan approved by the TPB under the TPO. The WKCDA should not be allowed to dispose of any land in the WKCD or create a charge over any land in the WKCD as a security for raising finances, without the prior approval of the Government.

Composition of the board of the WKCDA

13. The WKCDA should be governed by a board (“the Board”) comprising members with different backgrounds from the community, in particular those connected with or having experience and knowledge in the arts and culture. A small number of public officers should also be appointed to the Board. The majority of the members of the board should be non-officials. In line with the general practice regarding formation of statutory bodies, the Chairman, all non-official members and public officer members of the Board should be appointed by the CE. Non-official members should be appointed in their personal capacity for a period of not more than three years, with the possibility of re-appointment. The WKCDA may employ a Chief Executive Officer (CEO) subject to CE’s prior approval. The CEO will be an ex officio member of the Board.

14. The Board should also comprise individuals from various backgrounds considered to be relevant to the development and operation of the WKCD. The development and operation of the WKCD would require expertise and knowledge in different fields at different stages of the project. For instance, at the development stage, the Board would need expert advice and inputs from professional disciplines such as town planning, architecture, engineering, surveying, financial management, etc., as well as expertise in the planning and design of arts and cultural facilities. During the operation stage, the Board would need the advice of cultural and management experts who are knowledgeable in the operation of the arts and cultural facilities as well as the presentation of programmes and exhibitions, etc. As such, the composition of the Board may vary from time to time to tie in with the different stages of the development and operation of the WKCD facilities. We therefore consider it not appropriate to specify the precise composition of members in the legislation.

15. To ensure efficient operation of the Board, the number of Board members should not be too large and should be capped at 20 (including Chairman and CEO). We propose that the Board

should comprise a Chairman, a CEO, 3 public officer members and not more than 15 members from the community in their personal capacity, including individuals who, in the opinion of the CE, are connected with the arts and culture and various other fields.

Public accountability

16. We propose to build in a number of provisions to the proposed legislation to enhance the public accountability of the WKCD and to safeguard public interest. These would include the requirement for the Board members to declare interest and the WKCD to make available such information for public inspection. The WKCD would be designated as a public body under the Prevention of Bribery Ordinance (Cap. 201) and the Ombudsman Ordinance (Cap. 397).

17. The WKCD should be required to submit three-year corporate plans and annual business plans to the Government for records. It should be required to set up an audit committee, appoint an auditor and submit its annual reports and audited statements of accounts to the Government which will table them in the LegCo. The Chairman and CEO of the WKCD should be required to attend LegCo meetings and answer questions at the meetings. If the public interest so requires, the Government may give to the WKCD any directions, provided that such a direction shall not require the WKCD to do or omit to do anything which would be wholly or partly inconsistent with any provision of the WKCD Ordinance.

Consultation

18. The WKCD should be required to consult the public and the stakeholders on the planning, development and operation of the WKCD, such as the preparation of the master plan and any subsequent changes to it. In line with the spirit of establishing an independent statutory body to take forward the WKCD project, and in light of the difficulty in predicting specific important matters, the discretion as to what and when to consult the public should be

left to the WKCDA.

Name of the Statutory Body

19. The name “West Kowloon Cultural District Authority” is a working title. We intend to give an appropriate name to the statutory body to reflect its purposes and objects, and the fact that the WKCD is an arts and cultural district for the whole of Hong Kong. We maintain an open mind on the choice of a name and would welcome any suggestions from all quarters. We plan to have the name of the statutory body decided when the bill is introduced to the LegCo in early 2008.

Financial and Staffing Implications

Upfront endowment

20. In line with the financing approach recommended by the Consultative Committee, and assuming the WKCDA will be set up in late 2008, we will seek Public Works Subcommittee (PWSC)’s approval in mid 2008 for an upfront endowment of \$21.6 billion to be given to the WKCDA upon its establishment to finance the capital costs of the facilities under the purview of the WKCDA over the project period (including planning, design and construction costs of phase 1 and phase 2 arts and cultural facilities, other related facilities and RDE facilities, periodic major repair and renovation costs, museum collection costs and the costs incurred by the WKCDA during the development of phase 1 facilities).

21. We have also considered the alternative approach of seeking approval of the endowment by instalments but note the following drawbacks associated with this approach-

- (a) The WKCD will be planned as an integrated district with arts and cultural facilities suitably clustered and integrated with commercial facilities such as RDE and hotel facilities to create synergy, and attract greater

people flow both day and night. If the upfront endowment was to be approved and paid by instalments, it would create funding uncertainty which would in turn adversely impact on the formulation of the master plan of the WKCD (where all the proposed facilities would have to be set out) and the development of the various facilities. This is especially so if the WKCDA is to adhere to the timetable assumed in the Consultative Committee's recommendation - completing the construction of all the proposed facilities in Phase 1 (12 performing arts venues, and 70% of the M+, the Exhibition Centre and RDE facilities) by 2014-2015, i.e. within a time period of 6-7 years. This would also not be conducive to providing a stable environment for promoting arts and cultural development.

- (b) The upfront endowment sought is the net present value (NPV) in 2008 of the expected cash flows for the capital costs over the project period. The WKCDA is required to secure adequate investment income from any unused endowment to help meet the estimated cash flow requirements over the project period. If the endowment is separated into a number of instalments paid over a period of time, the actual funding amount available for investment at any one time would be reduced. As a result, the Authority would have less flexibility in formulating an investment portfolio that would maximise the return at a lower risk. Besides, an upfront endowment will provide greater incentives for WKCDA to make the optimal use of the financial resources under its control for developing and operating the WKCD in a financially sufficient and sustainable manner as recommended by the Consultative Committee.

Taking into account the above drawbacks, approving and providing the required funding by instalments would risk undermining the WKCDA's ability and flexibility to develop all the

proposed facilities under an integrated approach in a timely manner. We therefore seek Members' endorsement to provide the requisite funding to the WKCD at the commissioning stage bearing in mind the management of fund would be subject to checks and balance as set out in the proposed legislation.

Interim M+

22. To gather momentum for the recommended museum facility (M+) and to gradually build up a solid foundation, the Consultative Committee has recommended that a venue be identified to start an interim M+ as soon as practicable. The interim M+ would possess similar functions as the permanent M+ in the WKCD although with a much smaller scale. The interim M+ would be a platform for training of professional staff, as well as providing arts education to the public to foster awareness, understanding and appreciation of arts and culture to help create and sustain public interest. It would also conduct researches and build up the collection with a view to laying a solid foundation for M+. We will proceed with the establishment of the interim M+ as soon as possible. Accordingly, we will seek the PWSC's approval in mid 2008 to provide funding of about \$200 million to cover the estimated capital expenditure for converting a historical building for use as the interim M+ and the estimated recurrent expenditure for operating the interim M+ up to 2014-15.

WKCD Planning Office

23. The planning of the WKCD will involve a number of interface issues with the overall planning and infrastructural developments in the West Kowloon Reclamation area, including notably the interface with the Terminus of the Express Rail Link which is expected to be located in the close proximity of the WKCD, and the connectivity of the WKCD with its surrounding areas and districts. At the same time, it is necessary to set up a dedicated WKCD Planning Office in the Home Affairs Bureau to co-ordinate efforts in preparing for the establishment of the WKCD and to undertake initial tasks such as those relating to the preparation of

the OZP. The Planning Office will in due course provide the necessary interface between the Government and the WKCDA on the implementation of the WKCD project during the first few years of the project. In tandem with the scrutinisation of the WKCDA bill by the LegCo, we plan to set up the Planning Office by July 2008. We are drawing up detailed job descriptions of the officers to be included in the Planning Office and will consult the relevant LegCo Panel and committees before seeking approval of the Establishment Subcommittee in mid-2008.

Home Affairs Bureau
November 2007