

# 立法會 *Legislative Council*

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## **Bills Committee on West Kowloon Cultural District Authority Bill**

### **Background Brief**

#### **Purpose**

This paper provides background information on the West Kowloon Cultural District Authority Bill (the Bill) and a summary of the views and concerns expressed by Members during relevant deliberations within the Legislative Council (LegCo).

#### **Background**

2. The idea of establishing an independent statutory body to oversee the planning, development and operation of the West Kowloon Cultural District (WKCD) was first raised in a motion debate on "Development of the West Kowloon Cultural District" at the Council meeting on 5 January 2005. According to the terms of the motion passed (**Appendix**), the Council strongly asked the Administration to set up a WKCD development authority, which should be a statutory body comprising members from various sectors, to take up the planning, development and management of WKCD. At that time, the Administration was pursuing the WKCD project under the Invitation for Proposals<sup>1</sup> (IFP) process.

3. In announcing the adoption of a modified approach under the IFP framework on 7 October 2005, the Administration acknowledged that there was broad public support for establishing an independent body to oversee the planning, design, development and operation of WKCD to enhance public participation and for effective monitoring.

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<sup>1</sup> In September 2003, through IFP, the Government invited, among other things, submission of a preliminary masterplan based on the development brief and supporting technical, financial and operation proposals, including the amount of land premium offered, if any, and a comprehensive business plan setting out a strategy for establishing WKCD as a world class arts, cultural and entertainment attraction. The successful proponent will be required to plan, design, finance, construct, procure, fit out and complete WKCD and subsequently operate, maintain and manage the core art and cultural facilities for a period of 30 years. A land grant of the site for a term of 50 years in favour of the successful proponent will be executed at such time as Government considers appropriate after the execution of the project agreement.

4. On 21 February 2006, the Chief Secretary for Administration announced that the Government would not further pursue WKCD under the IFP process as none of the shortlisted proponents made any firm and clear commitment that they would continue to pursue WKCD under the modified IFP framework. In April 2006, the Administration established the Consultative Committee on the Core Arts and Cultural Facilities of the West Kowloon Cultural District (Consultative Committee), supported by three advisory groups, to re-examine, with a view to re-confirming if appropriate, the need for Core Arts and Cultural Facilities (CACF) as defined in the IFP and other arts and cultural facilities to be provided in WKCD and the financial implications of developing and operating these facilities. The developments since then up to the gazettal of the Bill on 1 February 2008 are detailed in paragraphs 2 to 7 of the LegCo Brief on "West Kowloon Cultural District: The Way Forward and West Kowloon Cultural District Authority Bill" issued by the Administration on 31 January 2008. The Bill was introduced into LegCo on 20 February 2008.

#### **Relevant recommendations of the Subcommittee on West Kowloon Cultural District Development in its Phase I and Phase II studies**

5. In examining the Administration's approaches to implementing the WKCD project under the initial and modified IFP frameworks, the Subcommittee on West Kowloon Cultural District Development<sup>2</sup> (the Subcommittee) has recommended, inter alia, that a statutory body should be established to assume the overall responsibility for spearheading the WKCD project with the following functions --

- (a) drawing up the master development plan for WKCD;
- (b) determining CACF and other facilities and developments in WKCD to ensure their compatibility;
- (c) determining the strategy in developing CACF and other facilities and developments including the timetable of development and the parties for undertaking the development;
- (d) determining the operation and management mechanism for CACF and other facilities in WKCD; and
- (e) overseeing the implementation of the project in accordance with the agreed timeframe and agreed quality standards.

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<sup>2</sup> The Subcommittee was set up by the House Committee on 21 January 2005 to study and follow up issues relating to the development of WKCD. The Subcommittee submitted two reports to the House Committee on its Phase I and Phase II study on 6 July 2005 and 6 January 2006 respectively. On 8 February 2006, the Council endorsed the two reports of the Subcommittee upon a relevant motion moved by Hon Alan LEONG Kah-kit, Chairman of the Subcommittee.

6. The Subcommittee recognizes the need to provide the statutory body with a high degree of autonomy in its operation, but has stressed that its budget and financial requirements should be subject to public scrutiny and LegCo's approval.

7. Regarding the composition of the statutory body, the Subcommittee has recommended that the statutory body must be widely representative with high level of public participation. The Subcommittee considers it advisable that all parties which had a role to play in the planning, implementation and management of the cultural and non-cultural facilities be represented on the statutory body. To ensure the representation of and acceptability by the relevant sectors, the Subcommittee considered instead of sitting on the statutory body on an ad personam basis, the members appointed by the Chief Executive should be nominated by specified organizations representing the relevant sectors. Through the nomination system, the representatives appointed would have the obligation of consulting and reporting to the stakeholder groups. This would ensure that the views of the relevant sectors will be taken into account when the statutory body formulates policies in relation to WKCD.

8. For the purpose of ensuring that WKCD is developed and implemented in the best public interest and not just in the interest of the relevant sectors represented in the statutory body, the Subcommittee has highlighted that there should be accountability, transparency and good governance in its operation. These cardinal principles must be built into the mode of operation of the statutory body. How this could be achieved and whether this should be achieved by legislative or administrative means should be thoroughly considered during the scrutiny of the legislative proposal, taking account of public views.

### **Recent deliberations of the Subcommittee**

9. Following the release of the Recommendation Report of the Consultative Committee by the Administration on 12 September 2007, the Subcommittee has held a number of meetings to discuss various aspects of the WKCD project. The Subcommittee has also received views from interested organizations and individuals at three meetings, one of which was devoted to hearing their views on the Administration's proposals in relation to the establishment of a statutory body to take forward the WKCD project. After the West Kowloon Cultural District Authority (WKCDA) Bill was gazetted on 1 February 2008, the Subcommittee has held two meetings with the Administration to discuss the policy aspects of the Bill, at which the following issues were discussed --

- (a) the purposes, functions and powers of the statutory body, with the proposed corporate name of WKCDA;
- (b) the composition of the Board of WKCDA and the mechanism for constituting the Board;

- (c) the relevant town planning, land and financial matters; and
- (d) the measures to ensure the accountability of WKCDA and to safeguard public interests.

10. Having regard to deputations' views, Subcommittee members have expressed concerns on various proposed arrangements in the Bill. In gist, according to the proposals in the Bill, the statutory body would be conferred with very wide ranging powers and would be vested with substantial public resources, in terms of land and monetary endowment. However, the checks and balances and the accountability measures provided in the Bill are not adequate to ensure that the statutory body would be subject to sufficient public scrutiny and monitoring by LegCo. Some specific concerns expressed by Subcommittee members are summarized in the ensuing paragraphs.

#### Functions and powers

11. Given that WKCDA would have the powers to sponsor or provide financial support to facilitate the organization of activities relating to arts and culture and to commission different forms of arts production, there is a need to clearly define the relationship between the statutory body and the existing government and statutory bodies which are responsible for providing funding support to arts organizations. Where appropriate, new mechanisms should be put in place to ensure effective coordination and fair funding arrangements.

#### Composition of the Board and appointment mechanism

12. Members are concerned that as all Board members (other than the Chief Executive Officer) are to be appointed by the Chief Executive, it is most likely that the Board members would be apologists of the Administration; its accountability and representativeness would be much in doubt. Some members have suggested that the LegCo Member(s) to be appointed to the Board should be elected by and from amongst LegCo Members, and that the other non-official Board members should be elected/nominated by the relevant sectors.

13. It is provided in the Bill that the Chairman of WKCDA may or may not be a public officer. Members are gravely concerned that the normal checks and balances on the powers of a statutory body would become ineffectual if WKCDA is to be headed by a very senior government official such as the Chief Secretary for Administration; the monitoring roles that should be exercised by various government departments and relevant authorities on the financial management, planning and cultural development work etc. of WKCDA would likely be overridden by the senior official's top position in the Government.

Accountability measures

14. Some members have expressed dissatisfaction that the following suggestions which they had made to enhance the accountability of the statutory body are not reflected in the Bill --

- (a) the meetings of the WKCDA Board and committees established by the Board should be held in public except for specified circumstances;
- (b) a formalized machinery should be put in place to facilitate comprehensive and structured public engagement in the planning, implementation and operation of WKCD;
- (c) the business plans and corporation plans of WKCDA shall be subject to the scrutiny of LegCo and the public; and
- (d) the general rule that a non-official member of an advisory or statutory body should not serve more than six years in any one capacity and a person should not serve as a member on more than six advisory and statutory bodies should be applicable to members appointed to the WKCDA Board and its committees.

15. The Subcommittee noted the Administration's written response (LC Paper No. WKCD-524) to the above concerns at its latest meeting on 14 February 2008. Members in general were disappointed with the Administration's lack of sincerity in addressing their concerns. Some members criticized that the proposed institutional and procedural arrangements for the statutory body were retrogressive in terms of representativeness, accountability and transparency. The proposed arrangements were also contrary to the Administration's claim that setting up the statutory body to take forward the WKCD project would be in line with the principles of "Partnership", "Community-driven" and "People-oriented" underlying the Government's existing cultural policy. One could not but suspect that the very purpose of the proposed legislative framework for the statutory body was to ensure that the Chief Executive or the Administration would have unfettered control over the statutory body and making it subject to minimal public scrutiny and monitoring by LegCo.

**Motion on "West Kowloon Cultural District development project"  
passed by the Legislative Council at the meeting of 5 January 2005**

(Translation)

"That, as the Administration has decided to award the development of the 40-hectare West Kowloon Cultural District ("the WKCD development") to a single consortium in one go and allows the public only 15 weeks to comment on the three proposals selected in the first stage, such course of action has failed to ensure the optimal use of precious land resources in Hong Kong and safeguard public interests while nurturing arts and culture, this Council strongly asks the Administration to:

- (a) extend the consultation period to six months to allow sufficient time for public participation;
- (b) make public all the proposals submitted to the Government by persons interested in participating in the WKCD development, including information on financial arrangements, so as to enable the public to fully grasp the details of the development proposals during the consultation period;
- (c) remove the requirement that the canopy, which requires huge funds to construct, be a mandatory component of the WKCD development;
- (d) withdraw the decision to award the entire piece of land together with the WKCD development by way of one single tender, and break the lot into smaller pieces of land for public tender or auction in the market by batches so that small and medium developers in Hong Kong can participate in the development, with a view to maximizing the proceeds from the land sale;
- (e) formulate long-term and sustainable policies on Hong Kong's arts and culture, use part of the proceeds from the sale of the 40 hectares of land to support and promote the related policies and, in drawing up the specific details and implementing the policies, allow institutionalized participation of the civil society and, in particular, solicit and adopt the views of the local art and cultural sectors; and
- (f) set up a West Kowloon Cultural District development authority, which should be a statutory body comprising members from various sectors, to take up the planning, development and management of the West Kowloon Cultural District."