

Bills Committee on West Kowloon Cultural District Authority Bill

**Points raised by individual members at the meeting on 20 May 2008
on which the Administration is requested to provide written response**

The Administration's response to the points raised by individual members at the meeting on 20 May 2008 is set out below –

(1) The Administration should clarify the relationship between clauses 17 and 18(3)(a) in relation to public consultation.

Administration's Response:

Clause 17 is a general provision that requires the Authority to consult the public on a wide range of matters relating to the work of the Authority. The scope of Clause 17 is sufficiently wide to cover the preparation of a development plan which, under Clause 18, also requires public consultation. As Clause 18 deals specifically with the preparation of a development plan, it is therefore necessary to include "[W]ithout prejudice to section 18(3)(a)," in Clause 17 to avoid any confusion that there are two conflicting provisions and make it clear that the public consultation requirement under this Clause will not in any way affect the requirement under Clause 18.

(2) The Administration should suitably qualify the powers of the Secretary for Home Affairs (SHA) to impose requirements and conditions under clause 18(4) by, for example, (a) defining the scope of matters with respect to which he may impose requirements and conditions and (b) specifying that SHA shall not impose any requirements or conditions inconsistent with the WKCDA Ordinance.

Administration's Response:

Clause 18(4) provides that SHA may impose such requirements or conditions as he thinks necessary or expedient for the development of the plan area. Clause 18(5)(b) further provides that in preparing a development plan, the Authority shall, among other things, ensure that the requirements or conditions imposed by the Secretary for Home Affairs (if any) under Clause 18(4) are satisfied.

The purpose of the clause is to empower SHA in ensuring that the planning of the West Kowloon Cultural District ("WKCD") site will be prepared in a way that is conducive to achieving the objectives of the Authority and meeting the expectations of the public. We therefore consider it not necessary to specify explicitly in the Bill that SHA shall not impose any requirements or conditions inconsistent with the WKCDA Ordinance. As it would be difficult to foresee all the matters that will be involved when West Kowloon Cultural District Authority ("WKCDA") prepares the Development Plan, we also consider it inappropriate to define the scope of matters with respect to which SHA may impose requirements and conditions as this may limit his role mentioned above.

(3) The Administration should explain whether the role and powers of SHA under clause 18(4), as currently drafted, may be incompatible with those of other authorities such as the Town Planning Board and government bodies responsible for public works.

Administration's Response:

Clause 18(1) of the Bill imposes a statutory duty for the WKCDA to prepare a development plan. In doing so, the Authority shall consult the public and SHA. Clause 18(4) provides that SHA may impose such requirements or conditions as he thinks necessary or expedient for the development of the plan area. Clause 18(5)(b) specifies that in preparing a development plan, the Authority shall, among other things, ensure that the requirements or conditions imposed by the Secretary for Home Affairs (if any) under Clause 18(4) are satisfied.

After consulting the public and SHA, the WKCDA shall submit a development plan to the Town Planning Board (TPB) for consideration under Clause 18(7). Upon the submission of a development plan to it, the Town Planning Board shall consider the Development Plan and may –

- (a) deem the plan as being suitable for publication;
- (b) deem the plan as being suitable for publication subject to such amendments as the TPB shall specify; or
- (c) refuse to deem the plan as being suitable for publication.

By virtue of Clause 18(8), a development plan which is deemed suitable for publication under subsection (a) or (b) is deemed to be a draft plan prepared by the TPB for the purposes of the Town Planning Ordinance (Cap. 131) and the provisions of that Ordinance concerning any draft plan are to apply accordingly.

In the light of the above, the role and powers of SHA under Clause 18(4), as currently drafted, could only be exercised before the Development Plan is submitted to the TPB. It would not, therefore, be incompatible with those of other authorities such as the Town Planning Board. Furthermore, as Government bodies responsible for public works will undertake various projects only after the Development Plan has been prepared, SHA's power under Clause 18(4) will also not be incompatible with them.

(4) The Administration should provide background reference information on why the Town Planning Board did not undertake public consultation on some draft plans, such as that for the Nga Tsin Wai Village redevelopment project.

Administration's Response:

All new plans and amendments to approved or draft plans prepared under the Town Planning Ordinance, Cap 131 (TPO) are subject to the statutory

public consultation procedures stipulated under the TPO. As a usual administrative arrangement, these new plans and amended plans will also be presented to the relevant District Council or committee (e.g. Rural Committee).

In respect of the Nga Tsin Wai Village project, the site is zoned “Residential (Group A)” on the Approved Wang Tau Hom and Tung Tau Outline Zoning Plan No. S/K8/17. The Urban Renewal Authority’s proposed development conforms with the land use zoning. Hence, planning permission is not required from the Town Planning Board.

(5) The Bill should provide that the Government shall, if necessary, provide funds to WKCD so as to balance its books.

Administration’s Response:

We have proposed to adopt a prudent and transparent financing approach for the WKCD project, as follows:

- (a) to finance the capital costs of the WKCD project through an upfront endowment appropriated by the LegCo roughly equivalent to the estimated land revenue from the residential, hotel and office part of the commercial sites within the WKCD; and
- (b) to vest the retail/dining/entertainment (RDE) part of the commercial sites in the WKCD to provide a steady source of recurrent income through rental proceeds to meet the operating deficits of the core arts cultural facilities and related facilities. The capital cost for the RDE facilities will also be covered by the one-off upfront endowment.

To implement the WKCD project, we will seek the approval of Legislative Council’s Finance Committee to give a one-off upfront endowment of \$21.6 billion, in 2008 NPV, to the WKCD. The upfront endowment will cover the capital costs of the WKCD project during the 50-year project period. According to GHK (Hong Kong) Limited, which was engaged by HAB as Financial Advisor (FA) to assist in assessing the financial implications of the project, the rental income from the RDE facilities will be able to meet the operating deficits of the core arts cultural facilities and related facilities.

Furthermore, Clause 19 of the Bill provides that the Authority shall manage its finances (including resources) with due care and diligence; and ensure the financial sustainability of the operation and management of arts and cultural facilities, related facilities and ancillary facilities. Clause 20 specifies the WKCD shall also invest in a financially prudent manner the funds available for investment in such classes or descriptions of investment as the Financial Secretary may specify in writing. These provisions seek to ensure that the WKCD implements the WKCD project in a financially sustainable manner.

In the event that WKCDA runs into financial difficulty that it is unable to resolve, the Administration will be prepared to discuss with the Authority to understand the problems and to explore the best possible way to tackle the problem having regard to the relevant facts and circumstances.

(6) The Bill should require the establishment of trusts which are independent of WKCDA to hold the collections of the museum facilities in WKCD in trust to ensure that WKCDA will not regard the collections as resources at its disposal.

Administration's Response:

We understand that the public does not wish WKCDA to treat the collection of museum facilities as its resources which can be disposed in the same way as any other properties. However, as the museum facilities have yet to be set up at this stage, there is practical difficulty to prescribe in the Bill provisions requiring WKCDA to establish trusts to hold collections of specified museum facilities.

(7) The resources of WKCDA under clause 19(1) should exclude the gifts, donations or sponsorship received or solicited by WKCDA under clause 5(2)(f).

Administration's Response:

Clause 19(1)(d) of the Bill provides that the resources of the WKCDA consist of all other moneys and property, including gifts, sponsorships, donations, interests, profits, dividends and investment income, received by the Authority. It is a common feature of arts and cultural institutions overseas to solicit gifts, donations or sponsorship to support their operation. The purpose of Clause 19(1)(d) is to enable WKCDA to follow overseas practices.

(8) The Administration should provide information on the legislation of comparable public statutory bodies in relation to clauses 20 and 21.

Administration's Response:

A table setting out the relevant provisions of comparable public statutory bodies on investment and borrowing powers are set out at **Annex**.

(9) The Administration should explain why WKCDA is vested with unrestricted powers to enter into financial transactions under clause 22.

Administration's Response:

Clause 22 provides that the WKCDA may on such terms and conditions as it considers fit, enter into any agreement or arrangement in connection with its

financial affairs, including any agreement or arrangement for reducing, compensating for or hedging against any financial risk. The purpose of the clause is to empower the WKCDA to enter into financial transactions other than investment and borrowing, which are detailed in Clauses 20 and 21. Similar power has also been provided for in the Airport Authority Ordinance (Cap. 483) (c.f. Section 30 of Cap. 483).

When exercising its power to enter into financial transactions under Clause 22, the Authority should not violate its obligation under Clause 19(2), i.e. to manage its finances with due care and diligence and ensure the financial sustainability of the operation and management of arts and cultural facilities, related facilities and ancillary facilities. Given this overarching requirement, we consider it appropriate to empower the WKCDA to enter into financial transaction under Clause 22.

Home Affairs Bureau
July 2008

**Comparison between the proposed West Kowloon Cultural District Authority and other comparable statutory bodies in Hong Kong
in respect of investment and borrowing powers**

| | West Kowloon Cultural District Authority | Airport Authority (Cap. 483) | Hong Kong Science and Technology Parks Corporation (Cap. 565) | Urban Renewal Authority (Cap. 563) | Hong Kong Arts Development Council (Cap. 472) |
|------------------------------|---|---|---|--|--|
| Investment | <ul style="list-style-type: none"> The [WKCD] Authority shall invest, in a financially prudent manner, the funds available for investment in such classes or descriptions of investment as the Financial Secretary may specify in writing. (c.f. Clause 20(1) of the WKCD Bill) | <ul style="list-style-type: none"> Funds of the [Airport] Authority which are available for the time being for investment (otherwise than in the performance of a function conferred on the [Airport] Authority by or under section 5, 7 or 30 [of Cap. 483]) may be invested in such classes or descriptions of investment as the Financial Secretary may in writing specify. (c.f. Section 25 of Cap. 483) | <ul style="list-style-type: none"> The [HKSTP] Corporation may invest money that is not immediately required to be expended in such forms of investment as the [Financial] Secretary may in writing approve. (Section 19 of Cap. 565) | <ul style="list-style-type: none"> The [Urban Renewal] Authority may invest money that in any financial year is not immediately required to be expended in such forms of investment as the Financial Secretary may approve. (c.f. Section 14 of Cap. 563) | <ul style="list-style-type: none"> All money of the [HKAD] Council which is not immediately required shall be deposited with any bank licensed under the Banking Ordinance (Cap 155) or invested in other investments that may be approved by the Financial Secretary, either generally or in any particular case. (c.f. Section 9 of Cap. 472) |
| Borrowing powers, etc | <ul style="list-style-type: none"> The [WKCD] Authority may borrow from the Government, or otherwise raise, moneys as may be required for the performance of its functions on such terms and conditions as may be approved by the Financial Secretary. Subject to [Clause 21(3) of the Bill], the [WKCD] Authority may borrow moneys from any person other than the Government for performing its functions. The Chief Executive may issue a direction in writing [...] to the Authority that it is not to borrow or raise any sum (or its equivalent in a currency other than Hong Kong dollar) which exceeds an amount specified in the direction without the prior written approval of the Financial Secretary. The [WKCD] Authority shall comply with a direction issued under [Clause 21(3) of the Bill]. The [WKCD] Authority may, with the prior written approval of the Financial Secretary, charge all or any part of its property as | <ul style="list-style-type: none"> Subject to subsections (3) and (4) [of Cap. 483, the [Airport] Authority may, in such manner and on such terms and conditions as it thinks fit, borrow or otherwise raise money (including money in a currency other than the currency of Hong Kong). Subject to subsection (4) and to section 23(5) [of Cap. 483], the [Airport] Authority may create and issue, either in the currency of Hong Kong or in any other currency, bonds, notes or other securities, or negotiable instruments. The powers conferred by this section may only be exercised to provide the Authority with such sums or credits as it may require for - <ul style="list-style-type: none"> (a) performing the functions conferred on it by th[e] Ordinance; (b) repaying, or facilitating the repayment of, money previously borrowed or otherwise raised by it and | <ul style="list-style-type: none"> The Corporation shall have powers to do, in any part of the world, such things as are expedient for or conducive to the attainment of the purposes of the Corporation or of any purpose reasonably incidental to or consequential upon any of those purposes; to do any thing [...] jointly with other persons. Without prejudice to the generality of [Section 8(1)], the [HKSTP] Corporation may [...] with the prior approval of the Financial Secretary, borrow or raise money on such security or other conditions as the Board considers appropriate. (c.f. Section 8 of Cap. 565) | <ul style="list-style-type: none"> The [Urban Renewal] Authority may borrow from the Government, such money as may be required for the performance of the duties of the [Urban Renewal] Authority under this Ordinance, on such terms and conditions as may be approved by the Financial Secretary. Subject to [Section 11(3)], the [Urban Renewal] Authority may borrow by way of overdraft from sources other than the Government such money as it may require for meeting its obligations or performing its duties under th[e] Ordinance. The Secretary for Financial Services and the Treasury may give directions in writing of a general or specific character to the Authority in relation to the amount of money which may be borrowed under [section 11(2)] and the [Urban Renewal] Authority shall comply with those directions. The [Urban Renewal] Authority | <ul style="list-style-type: none"> Subject to terms and conditions that may be required by the Financial Secretary, the [HKAD] Council may raise and secure a loan or loans, chargeable and payable out of the capital of the Council, of amounts of money that may be required for any capital expenditure of the Council or for the repayment of any loan previously raised. The [HKAD] Council may, with the approval of or in accordance with the terms of any general authority given by the Financial Secretary, borrow by way of overdraft or otherwise, amounts of money that may be required for discharging the obligations, performing the functions or exercising the powers conferred and imposed on the Council under th[e] Ordinance. (c.f. Section 10 of Cap. 472) |

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| | <p>security for the repayment of moneys borrowed or raised.</p> <ul style="list-style-type: none"> A charge referred to [Clause 21(5) of the Bill] in so far as it relates to any property of the [WKCD] Authority is not to be enforced, whether by order of any court or otherwise, except with the prior written approval of the Chief Executive in Council and in accordance with the terms and conditions of such approval. (c.f. Clause 21(1) of the WKCDA Bill) | <p>paying any interest on or any premium or other charge or incidental expense arising as regards such money; or</p> <p>(c) paying any money recoverable under section 29(7) [of Cap. 483].</p> <ul style="list-style-type: none"> The Chief Executive may issue a direction in writing given for the purposes of this section and directing the [Airport] Authority not to borrow any sum (or its equivalent in a currency other than the currency of Hong Kong) which exceeds an amount specified in the direction without the prior written consent of the Financial Secretary. For so long as a direction under this subsection is in force the [Airport] Authority shall comply with it. Where a security or a negotiable instrument is created or issued by the [Airport] Authority or such a security or instrument is transferred or assigned from one person to another, nothing in th[e] or any other Ordinance or law shall be construed as requiring the Authority to supply a certificate or other document, or any other material thing, for such creation, issue, transfer or assignment to be effective. In exercising the powers conferred on it by section 7 [of Cap. 483] the [Airport] Authority may acquire property under an agreement providing for the payment of the whole or part of the purchase price by instalments. (c.f. Section 28 of Cap. 483) | | <p>may with the approval of the Financial Secretary borrow, otherwise than by way of overdraft from sources other than the Government, such money as it may require for meeting its obligations or performing its duties under this Ordinance.</p> <ul style="list-style-type: none"> A person lending money to the [Urban Renewal] Authority shall not be concerned to inquire whether the borrowing of the money by the [Urban Renewal] Authority is legal or regular or whether the money lent has been properly applied by the [Urban Renewal] Authority and shall not be prejudiced by any illegality or irregularity or by misapplication or non-application by the [Urban Renewal] Authority of the money. The [Urban Renewal] Authority may with the approval of the Financial Secretary charge all or any part of its property as security for the repayment of money borrowed. (c.f. Section 11 of Cap. 563) | |