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**Joint Subcommittee to Monitor the Implementation of the
West Kowloon Cultural District Project**

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 29 March 2011**

**Update on matters relating to the resignation of the Chief Executive Officer
of the West Kowloon Cultural District Authority**

Purpose

This paper updates members on matters relating to the resignation of Mr Graham Sheffield from the post of the Chief Executive Officer ("CEO") of the West Kowloon Cultural District Authority ("WKCD"), and highlights the relevant concerns expressed by members of the Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project ("the Joint Subcommittee") at the meeting on 14 January 2011. Relevant information on the subject before the aforesaid meeting has been provided in LC Paper No. CB(2)795/10-11(01).

Background

Mr Sheffield's resignation and new appointment

2. On 24 March 2010, Mr Sheffield was appointed CEO of WKCD and officially assumed duty on 12 August 2010. On 15 December 2010, he tendered resignation on health reason. WKCD announced his resignation on 7 January 2011. On 24 February 2011, the British Council ("BC") announced in its press release in **Appendix I** that it had appointed Mr Sheffield as its new Director Arts and he would join BC at the beginning of May 2011. WKCD's relevant press release dated 11 March 2011, which included a chronology of events compiled by WKCD and Mr Sheffield's public statement, is in **Appendix II**.

3. Below is the key information provided by Mr Sheffield on his resignation from WKCD and new appointment by BC -

- (a) he had intended to serve out the three-month notification starting from his tendering of resignation as required under his

employment contract (until mid-March 2011), but he was repeatedly advised by his doctor in London not to return to the job in Hong Kong;

- (b) after his resignation from WKCD, he alerted friends, networks and recruitment firms to his new situation and began a search for new employment opportunities. On 4 January 2011, he was invited to meet a search firm for consideration of the post of BC's Director Arts;
- (c) between January and early March 2011, he went through a scrupulous, competitive and very thorough recruitment exercise for the BC post mentioned in (b); and
- (d) he had behaved with integrity and regard for due process at all times.

Employment restriction

4. According to its employment contract with Mr Sheffield, WKCD had imposed a six-month employment restriction on him after his resignation from WKCD. WKCD advised that in consultation with independent counsel, it had reviewed his employment contract and came to the view that the employment restriction applied only to employment within Hong Kong. The contract including the employment restriction clause as provided had been drafted upon legal and professional advice that it was reasonable, appropriate and enforceable.

Members' concerns

5. At its meeting on 14 January 2011, the Joint Subcommittee discussed with the Administration and WKCD on matters relating to Mr Sheffield's resignation. Members' major concerns are highlighted in the ensuing paragraphs.

Mr Sheffield's resignation

6. Members in general expressed grave concern about Mr Sheffield's resignation, as he had taken up the post for about five months only. Some members queried that his resignation might not be on medical grounds solely, as the timing of his resignation had coincided with the forthcoming end of his probation period and the forthcoming selection of a Conceptual Plan ("CP") Option for WKCD. They were concerned that there might be significant differences of views or internal conflicts between Mr Sheffield and the

WKCD Board, and WKCD might be unable to demonstrate its commitment to the cultural vision of WKCD and therefore, to convince Mr Sheffield that his aspiration could be realized.

7. The Administration advised that as Mr Sheffield's doctor had advised three times that Mr Sheffield should be released from duty immediately, the integrity of such medical advice should not be questioned. To respect Mr Sheffield's personal privacy, details of his health and the profession of his doctor would not be disclosed, unless with Mr Sheffield consent. The Administration stressed that Mr Sheffield did not leave WKCD unhappily, as he had stated in WKCD's press release on 7 January 2011 (Appendix I to LC Paper No. CB(2) 795/10-11(01)) that he was proud to have been part of the WKCD project and grateful for the support of the WKCD Board and his colleagues.

Compensation

8. Members asked whether there had been any compensation from WKCD or Mr Sheffield in connection with his resignation. WKCD advised that under his employment contract, Mr Sheffield had to serve a three-month notice if he tendered resignation during the fourth to the sixth month of his probation period, but WKCD had waived the requirement. While WKCD accepted his resignation with immediate effect on 7 January 2011 and he had a sick leave entitlement up to around mid-January 2011, it had decided to pay his salary until the end of January 2011. WKCD stressed that the whole arrangement for his resignation was on compassionate grounds, and no compensation from either side was involved.

Impact on the WKCD project

9. Some members expressed worry that Mr Sheffield's departure would hinder the progress of the WKCD project. The Administration advised that despite his departure, WKCD was confident that with a management team consisting of experienced and outstanding professionals, the WKCD project would proceed as planned and as scheduled.

10. There was concern on the impact of Mr Sheffield's departure on the selection of a CP Option for WKCD. The Administration advised that Mr Sheffield had been a member of the WKCD's Selection Panel, which also included some members of the WKCD Board and professionals. The preferred CP Option would be selected in the first quarter of 2011, and then Stage 3 Public Engagement exercise would be launched on the detailed Development Plan based on the preferred CP Option. The Development Plan would be submitted to the Town Planning Board for consideration by the end of 2011. It was expected that the first phase of WKCD would be completed by 2015.

11. There was a view that Mr Sheffield's resignation, together with the earlier resignation of Mr Angus CHENG as Executive Director ("ED") (Project Delivery) of WKCDA, had dealt a severe blow to WKCDA. While the medical advice on Mr Sheffield should not be questioned, WKCDA would be embarrassed if he would take up another arts-related appointment a few months after his resignation from WKCDA.

Recruitment for new CEO

12. As the entire recruitment process for Mr Sheffield had taken about one year, doubts were raised as to whether WKCDA's plan to find a replacement for him within six to nine months with the same employment terms and conditions would be achievable. WKCD responded that it had no plan to change the employment terms and conditions for the new CEO.

13. Some members suggested that factors including work pressure, culture differences and WKCDA's structure and mode of operation should be duly considered in the selection of the new CEO. The recruitment process for CEO should also be reviewed. Potential candidates should be adequately informed of the work situation and challenges the new CEO would face. They should also be arranged to meet with the management team of WKCDA to facilitate mutual understanding.

14. There was a view that there might be different requirements for CEO in different stages of the WKCD project, and the development of arts and culture and the planning of large works projects should require different expertise. The WKCDA Board should consider allocating these different types of work to different professionals instead of requesting the new CEO to take care of both.

Pre-employment medical checkup

15. Member also sought information on whether a pre-employment medical checkup had been required of Mr Sheffield and whether WKCDA would so require in future. According to WKCDA, neither Mr Sheffield nor EDs had been subject to such a requirement. It might be in breach of the Disability Discrimination Ordinance (Cap. 487) if a job applicant or an employee was denied employment for health reasons. Nevertheless, for the sake of better risk management, WKCDA would review the feasibility of putting in place the requirement for senior executives.

Support for new CEO

16. Members made suggestions on enhancement of support for the new CEO. To enhance effectiveness of its work, WKCDA might consider creating

a deputy CEO post which should be filled by a local professional with extensive connections in case the new CEO was a foreigner. As the Chief Secretary for Administration ("CS") could not handle all management matters in WKCD by himself and other members of the WKCD Board only served part-time, WKCD might appoint an acting CEO in the absence of CEO.

17. In the Administration's view, the WKCD Board would review any room for improvement in the allocation of work for CEO and the need to create a new post (such as Chief Operating Officer) to assist CEO.

Staff turnover in WKCD

18. Members noted that since WKCD came into operation, three staff had resigned from 1 April 2009 to 31 March 2010, and 12 had resigned from 1 April 2010 to 7 January 2011, and as at 7 January 2011, WKCD had a total of 58 staff. Members were concerned that the high personnel turnover rate (i.e. about 25%) would undermine the staff's morale in WKCD. They urged CS to be mindful of the gravity of the problem.

Management of WKCD

19. Some members were of the view that as the implementation of the WKCD project would require co-operation from many government departments, CS should be more hands-on rather than hands-off in supporting the work of WKCD. However, there was also a view on the need for a proper balance between hands-on and hands-off approaches. The Administration responded that the balance had all along been maintained properly.

Relevant papers

20. A list of relevant papers with their hyperlinks on the LegCo's website is in **Appendix III**.

British Council appoints new director for arts

24 February 2011

The British Council – the UK’s international cultural relations organisation - has appointed Graham Sheffield as its new Director Arts.

Martin Davidson, British Council Chief Executive said: “I am delighted to announce that Graham Sheffield has been appointed to the role of Director Arts. His extensive arts management and creative experience will ensure that the arts remain at the heart of the British Council’s mission to strengthen ties between the UK and people in over 100 countries.”

Graham Sheffield has held a number of high profile roles in the UK and internationally. Most recently he was CEO of the West Kowloon Cultural District in Hong Kong and before that he was Artistic Director of the Barbican Centre and Chair of the City of London Arts and Culture Forum and of the International Society for the Performing Arts.

Graham will join the British Council at the beginning of May. The role of Director Arts involves providing leadership and direction to a team of arts managers and specialists in the UK and overseas as well as focussing on strategy and delivery of an inspiring programme across the art forms.

The arts are at the heart of the British Council’s cultural relations work around the world. Whether it is in Egypt or India, the USA or China, international projects in the visual arts, music, drama, literature, architecture, film and the broader creative industries have the power to shape people’s understanding of the UK. International collaborations with institutions and artists bring British creativity to the attention of huge audiences and unlock creative and commercial opportunities for the next generation of artists.

Speaking of his appointment, Graham Sheffield commented: “I am looking forward with enthusiasm to working with all British Council colleagues and the sector at large to deliver a programme that will continue to inspire, enrich and engage people across the world. The current Anish Kapoor exhibition in India, the cultural programme at last year’s Shanghai Expo and the Russian market focus of the forthcoming London Book Fair are just a few high profile examples of British creativity making a difference internationally.”

A summary of the British Council's arts programme of work for 2011 can be found here: <http://www.britishcouncil.org/bc-arts-calendar-2011-issue-01.pdf>.

Rebecca Walton, interim Director Arts, will take up another senior role in the British Council focussed on partnership and business development.

Graham Sheffield was previously Chief Executive Officer of the West Kowloon Cultural District Authority in Hong Kong, leading the development of one of the largest arts infrastructures and programming projects ever envisioned.

Graham was Artistic Director of the Barbican from 1995-2010. Under his directorship, the Barbican became one of the most innovative, dynamic and respected centres in the arts world, with an award-winning international programme.

Graham was Chair of the City Arts and Culture Forum, responsible for strategic coordination and policy for the City of London's extensive arts portfolio, including its cultural plans for 2012 and beyond. He was Chair of the Royal Philharmonic Society (2007-2010), and also consulted to the Luminato Festival of Arts and Creativity in Toronto. Further to this he has also been the Chair of the International Society for the Performing Arts.

In 2009 Graham was appointed Advisor Arts and Creative Economies to the British Council, and joined the Advisory Committee for Index on Censorship.

He was awarded CBE in the 2010 New Year's Honours' list for services to the arts.

Graham's earlier career was as Music Director at the South Bank Centre and a Senior Music Producer at BBC Radio 3.

Ends

Media contact

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British Council



Appendix II

11 March 2011

In response to media enquiries and public concerns about the resignation of Mr Graham Sheffield and his subsequent appointment by the British Council, WKCD issues the following statement:

On 25 February 2011 the West Kowloon Cultural District Authority (the Authority) became aware of an announcement dated 24 February 2011 by the British Council that Mr Graham Sheffield, former CEO of the Authority, had been appointed the Council's Director Arts effective from May 2011.

The new appointment has aroused public concerns in Hong Kong about the relationship between Mr Sheffield's resignation and his new appointment. The Authority considered it imperative to address these concerns in a fact-based and transparent manner with due regard to legal and privacy considerations.

Over the past two weeks the Authority has been in communication with Mr Sheffield and the British Council to seek information and clarification regarding the sequence of events and circumstances leading to the new appointment. The Authority has also looked into the contractual arrangement between Mr Sheffield and the Authority.

In response, Mr Sheffield gave a public statement and requested the Authority to release it on his behalf (Attachment 1). He and the British Council provided additional information on the Authority's follow-up enquiries.

A chronology of events starting from Mr Sheffield's tendering of resignation is at Attachment 2. It is compiled on the basis of information available to the Authority.

In gist, Mr Sheffield tendered his resignation on 16 December 2010 on health reason and stated his intention to serve out the three-month notification as required under his contract. He proceeded to go on leave in the UK starting 17 December. He was released from his CEO duty by the Authority with immediate effect on 7 January 2011 after considering the medical advice given by Mr Sheffield's doctor and the best interest of the Authority. The Authority has also been advised that the process leading to Mr Sheffield's new appointment started after his resignation from the Authority's CEO post, and that his new appointment starts in May after a period of rest as advised by his doctor.

The Authority, in consultation with independent counsel, has reviewed the employment contract of Mr Sheffield and came to the view that the six-month employment restriction applied only to employment within Hong Kong. It is noted that the contract including the restriction clause as provided was drafted upon legal and professional advice that it is reasonable, appropriate and enforceable.

The Authority's decision to release Mr Sheffield earlier than required under his employment contract was based on medical advice provided by his doctor that he was unfit to return to Hong Kong to serve out his three-month notice. Such advice was given prior to and confirmed subsequent to the Authority's decision and was taken and acted on in good faith. The decision was considered to be appropriate under the circumstances.

The Authority has used its best endeavours to address public concerns about Mr Sheffield's new appointment. The Authority firmly believes it is time to move on to the next chapter of the WKCD project now that recruitment of a new CEO and preparation of the Development Plan are both well under way.

Attachment 1

The West Kowloon Cultural District Authority received the following statement from its former CEO, Mr Graham Sheffield, who has requested the Authority to issue it on his behalf:

PUBLIC STATEMENT

2 March 2011

It was a real privilege to lead the WKCD project last year. Unfortunately I became extremely unwell during my time in Hong Kong and I finally resigned in mid-December, before returning to the UK for Christmas and urgently to see my doctor. I had intended to work my notice, but I was strongly advised by my doctor in London not to return to the job in Hong Kong. The Board of WKCD were compassionate about my health situation and, in the circumstances, did not require me to work through my notice period. I sincerely appreciate that gesture, since that generosity of spirit has contributed to my on-going and steady recovery at home.

After my resignation I initially alerted friends, networks and recruitment firms to my new situation, to begin a search for new employment opportunities in the medium term, including that offered by the British Council. I was asked to participate in their selection process only after I had resigned from WKCD and was back in the UK.

In the last two months I have gone through a scrupulous, competitive and very thorough recruitment exercise for this new appointment. I will start work with the British Council in May, after two more months of rest and more than four months after resigning from WKCD and leaving Hong Kong. I believe I have behaved with integrity and regard for due process at all times. I am sorry that my departure and subsequent appointment at the British Council has caused concern and controversy. That was absolutely not my intention. I am proud to have been part of the wonderful WKCD project and grateful to the excellent team I worked with. I wish this wonderful venture a successful future.

Graham Sheffield

Attachment 2**Chronology of Events**

(based on information available to WKCD)

16 December 2010

Mr Graham Sheffield tendered his resignation letter, dated 15 December 2010, stating his intention to serve out the three-month notification as required under his employment contract (until mid-March 2011). He was asked to take a good rest and seriously reconsider his resignation during the Christmas break. Further discussion was expected after his return to Hong Kong in early January 2011.

17 December 2010

Mr Graham Sheffield left for the UK on vacation.

22 December 2010

Mr Graham Sheffield's doctor notified WKCDA (via email) his medical opinion: "*Graham Sheffield should stay here in London... As a matter of medical expediency he be released from his contract forthwith.*"

29 December 2010

Mr Graham Sheffield expressed (via email) that he had seen his doctor again before Christmas and the doctor "*very strongly directed me once again to follow his advice and insisted I should not travel back to Hong Kong at all. If I have to go for a few days, I should under no circumstances go there alone.*"

4 January 2011*

Mr Graham Sheffield met search firm at their invitation for consideration of British Council post.

5 January 2011

Chairmen of the WKCDA Board and the three relevant committees, viz Development, Performing Arts and Remuneration, met for a discussion. Having considered various relevant factors, including medical evidence, it was agreed that accepting Mr Graham Sheffield's resignation with immediate effect was in the best interest of the Authority. The decision was proposed to the Board for endorsement.

7 January 2011

The Board met and agreed to the proposed arrangement. The Chief Executive agreed to the Board's recommendation to release Mr Graham Sheffield from his duty with immediate effect. The Authority made an announcement on the same day.

12 January 2011

Copy of letter dated 11 January 2011 from Mr Graham Sheffield's doctor was received by WKCDA (via email) stating that Graham Sheffield "*has had to terminate his employment contract on medical advice with immediate effect... he is not fit to travel back to Hong Kong.*"

13 January 2011

Copy of letter dated 12 January 2011 from Mr Graham Sheffield's doctor was emailed to Dr Allan Zeman (and received on 14 January HK time) stating that "*I was very concerned when I saw him in late December... I felt that returning to Hong Kong and attempting to work out his notice of termination could be injurious to his long term health.*"

18 January 2011*

Mr Graham Sheffield was shortlisted for British Council Director Arts post.

18 February 2011*

Mr Graham Sheffield was offered British Council post which he accepted the following week.

24 February 2011

Mr Graham Sheffield's appointment was posted on British Council website.

28 February 2011

WKCDA wrote to Mr Graham Sheffield, seeking further information on his appointment.

2 March 2011

Mr Graham Sheffield's public statement was received. WKCDA wrote back, seeking further clarification.

10 March 2011

WKCDA received further clarification from Mr Graham Sheffield on the circumstances leading to his new appointment

**Information provided by Mr Graham Sheffield and British Council in response to our enquiries of 28 February 2011 and 2 March 2011.*

**Relevant documents on
Update on matters relating to the resignation of the Chief Executive Officer
of the West Kowloon Cultural District Authority**

Committee	Date of meeting	Documents/Papers	LC Paper No.
Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project	2009.1.13	Paper provided by the Administration on Current Position of the West Kowloon Cultural District Project	CB(2)612/08-09(01) http://www.legco.gov.hk/yr08-09/english/panels/wkcd/papers/wkcd0113cb2-612-1-e.pdf
	2009.6.19	Minutes of meeting	CB(2)2431/08-09 http://www.legco.gov.hk/yr08-09/english/panels/wkcd/minutes/wkcd20090619.pdf
	2009.9.7	Paper provided by the Administration on "The West Kowloon Cultural District Project"	CB(2)2433/08-09(01) http://www.legco.gov.hk/yr08-09/english/panels/wkcd/papers/wkcd0907cb2-2433-1-e.pdf
		Minutes of meeting	CB(2)402/09-10 http://www.legco.gov.hk/yr08-09/english/panels/wkcd/minutes/wkcd20090907.pdf
2009.11.16	Submission on matters relating to the recruitment of the Chief Executive Officer of West Kowloon Cultural District Project from Zuni Icosahedron dated 16 November 2009 (Chinese version only)	CB(2)362/09-10(01) http://www.legco.gov.hk/yr09-10/chinese/panels/wkcd/papers/wkcdcb2-362-1-c.pdf	

Committee	Date of meeting	Documents/Papers	LC Paper No.
Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project	2009.12.4	Paper provided by the Administration on "The West Kowloon Cultural District Project"	CB(2)426/09-10(01) http://www.legco.gov.hk/yr09-10/english/panels/wkcd/papers/wkcd1204cb2-426-1-e.pdf
		Administration's supplementary information on composition of the recruitment boards for recruiting senior executives of the West Kowloon Cultural District Authority (WKCDA)	CB(2)800/09-10(01) http://www.legco.gov.hk/yr09-10/chinese/panels/wkcd/papers/wkcd1204cb2-800-1-ec.pdf
		Summary of local press reports on the West Kowloon Cultural District project from 8 September to 24 November 2009 prepared by Research and Library Services Division of the Legislative Council Secretariat (Chinese version only)	FS06/09-10 http://www.legco.gov.hk/yr09-10/chinese/sec/library/0910fs06-c.pdf
	2010.9.20	Meeting with the Chief Executive Officer and other senior executives of WKCDA	CB(2)2257/09-10(01) http://www.legco.gov.hk/yr09-10/english/panels/wkcd/papers/wkcd0920cb2-2257-1-e.pdf

Committee	Date of meeting	Documents/Papers	LC Paper No.
Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project	2010.9.20	Summary of local press reports on the West Kowloon Cultural District project from 16 April to 14 September 2010 prepared by Research and Library Services Division of the Legislative Council ("LegCo") Secretariat (Chinese version only)	FS06(01)/09-10 http://www.legco.gov.hk/yr09-10/chinese/sec/library/0910fs06-1-c.pdf
	2011.1.14	Background brief prepared by LegCo Secretariat on "Resignation and recruitment of senior executives of the West Kowloon Cultural District Authority"	CB(2)795/10-11(01) http://www.legco.gov.hk/yr10-11/english/panels/wkcd/papers/wkcd0114cb2-795-1-e.pdf
		Minutes of the meeting	CB(2)1350/10-11

Council Business Division 2

Legislative Council Secretariat

28 March 2011