

立法會
Legislative Council

LC Paper No. CB(2)1254/15-16
(These minutes have been seen
by the Administration)

Ref : CB2/SS/5/15

**Subcommittee on Proposed Resolution under Section 37 of
the West Kowloon Cultural District Authority Ordinance (Cap. 601)**

**Minutes of the first meeting
held on Monday, 14 March 2016, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon Christopher CHUNG Shu-kun, BBS, MH, JP (Chairman)
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon Alan LEONG Kah-kit, SC
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, JP
Hon YIU Si-wing, BBS
Hon CHAN Chi-chuen
Dr Hon Elizabeth QUAT, JP
Dr Hon CHIANG Lai-wan, JP
Hon Tony TSE Wai-chuen, BBS

Members absent : Hon Emily LAU Wai-hing, JP
Hon WU Chi-wai, MH
Hon MA Fung-kwok, SBS, JP
Hon CHAN Yuen-han, SBS, JP
Dr Hon Helena WONG Pik-wan
Hon Alvin YEUNG Ngok-kiu

Public Officers attending : Item II

Home Affairs Bureau

Ms Angela LEE
Deputy Secretary for Home Affairs (2)

Mr Eric CHENG
Principal Assistant Secretary for Home Affairs (West
Kowloon Cultural District)

Attendance by invitation : Item II

West Kowloon Cultural District Authority

Mr Duncan PESCOD, GBS, JP
Chief Executive Officer

Mr Michael RANDALL
General Counsel

Ms Monica CHEUNG
Principal Legal Advisor

Ms Lisa TSANG
Head, Operations Development (Performing Arts)

Ms Fanny CHUN
Senior Manager, Facilities Management

Clerk in attendance : Ms Alice LEUNG
Chief Council Secretary (2)6

Staff in attendance : Ms Vanessa CHENG
Assistant Legal Adviser 5

Ms Jasmine TAM
Senior Council Secretary (2)8

Miss Meisy KWOK
Legislative Assistant (2)6

I. Election of Chairman

Ms Cyd HO, the member who had the highest precedence in Council among members of the Subcommittee present, presided over the election of the Chairman. Ms HO invited nominations for the chairmanship of the Subcommittee.

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2. Ms Starry LEE nominated Mr Christopher CHUNG and the nomination was seconded by Mr Tony TSE. Mr Christopher CHUNG accepted the nomination. As there was no other nomination, Ms Cyd HO declared Mr Christopher CHUNG elected as the Chairman of the Subcommittee.

3. Members agreed that election of Deputy Chairman was not necessary.

II. Meeting with the Administration

(File Ref : SF(72) to HABCS CR 7/1/99/1/1, LC Paper Nos. CB(3)413/15-16, LS 37/15-16, and CB(2)1066/15-16(01)-(02))

4. The Subcommittee deliberated (index of proceedings at **Annex**).

5. In response to Mr CHAN Chi-chuen, the Clerk advised that the Secretary for Home Affairs had withdrawn his notice for moving a motion (i.e. the Proposed Resolution) at the Council meeting of 16 March 2016 to seek the approval of the Legislative Council ("LegCo") for the proposed West Kowloon Cultural District (Public Open Spaces) Bylaw ("the proposed Bylaw") made by the West Kowloon Cultural District Authority ("WKCDA") under section 37(1) of the West Kowloon Cultural District Authority Ordinance (Cap. 601) ("WKDAO"), so as to allow time for scrutiny by the Subcommittee.

6. At the invitation of the Chairman, WKCDA briefed members on the guiding principle for the management of the public open spaces ("POS") in the West Kowloon Cultural District ("WKCD") and the key elements of the proposed Bylaw, details of which were set out in the LegCo Brief (File Ref : SF(72) to HABCS CR 7/1/99/1/1) and the powerpoint presentation materials tabled at the meeting.

(Post-meeting note: The softcopy of the powerpoint presentation materials provided by WKCDA was issued to members vide LC Paper No. CB(2)1096/15-16(01) on 15 March 2016.)

Admin/
WKCDA

7. The Subcommittee requested the Administration/WKCDA to provide the following information:

- (a) a written response of the Department of Justice to some members' strong view that a provision similar to section 4(2) of WKDAO should be included in the proposed Bylaw to spell out the guiding principle that the use of the WKCD POS should be open and accessible wherever possible, and to require that WKCDA should

Action

enforce the proposed Bylaw in ways which aimed to achieve the mission for POS to inspire, promote and encourage cultural pursuits for all;

- (b) given that persons authorized by WKCDA were empowered under section 23(5) of the proposed Bylaw to use "reasonable force" to remove a person suspected to have contravened the proposed Bylaw from WKCD POS, whether any guidelines would be provided to such authorized persons on the use of "reasonable force", and if so, the relevant details;
- (c) whether there were/would be any guidelines on when and how the authorized persons should seek assistance from the Police in enforcing the proposed Bylaw, and if so, the relevant details; and
- (d) details about the "Park Ambassadors" of WKCDA who would be among the authorized persons for managing WKCD POS and enforcing the proposed Bylaw, including their job nature, entry and training requirements, as well as the total number of "Park Ambassadors" employed/to be employed by WKCDA.

III. Any other business

8. Members agreed that the next meeting would be held on Monday, 18 April 2016, at 10:45 am to receive public views and to continue discussion with the Administration and WKCDA. If time permitted, the Subcommittee would commence section-by-section examination of the proposed Bylaw. Members noted that in line with the usual practice, a notice to invite views from interested parties would be posted on the LegCo website and invitation letters would be sent to the 18 District Councils.

9. There being no other business, the meeting ended at 5:22 pm.

Council Business Division 2
Legislative Council Secretariat
11 April 2016

**Proceedings of first meeting of the
Subcommittee on Proposed Resolution under Section 37 of the
West Kowloon Cultural District Authority Ordinance (Cap. 601)
on Monday, 14 March 2016, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)/Discussion	Action Required
<i>Agenda Item I - Election of Chairman</i>			
000135 - 000325	Ms Cyd HO Ms Starry LEE Mr Tony TSE Mr Christopher CHUNG	Election of Chairman	
<i>Agenda Item II - Meeting with the Administration</i>			
000326 - 000358	Chairman Mr CHAN Chi-chuen Clerk	Mr CHAN Chi-chuen's enquiry and the Clerk's advice regarding the notice previously given by the Secretary for Home Affairs for moving a motion (i.e. the Proposed Resolution) at the Council meeting of 16 March 2016 to seek the approval of the Legislative Council ("LegCo") for the proposed West Kowloon Cultural District (Public Open Spaces) Bylaw ("the proposed Bylaw").	
000359 - 001210	Chairman Admin WKCDA	Briefing and powerpoint presentation by the West Kowloon Cultural District Authority ("WKCD") on the proposed Bylaw (LC Paper No. CB(2)1096/15-16(01)).	
001211 - 001730	Mr Alan LEONG WKCDA	<p>Mr Alan LEONG's strong view that a provision similar to section 4(2) of the West Kowloon Cultural District Authority Ordinance (Cap. 601) ("WKCDAO") should be included in the proposed Bylaw to spell out the guiding principle that the use of the public open spaces ("POS") in the West Kowloon Cultural District ("WKCD") should be open and accessible wherever possible, and to require that WKCDA should enforce the proposed Bylaw in ways which aimed to achieve the mission for POS to inspire, promote and encourage cultural pursuits for all. He enquired why WKCDA considered it not feasible to do so.</p> <p>WKCDA's response that it had attempted to include a preamble in the proposed Bylaw to spell out the vision and mission for WKCD POS after consulting the Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project on the draft of the proposed Bylaw. However, WKCDA was advised by the Department of Justice ("DoJ") that such an approach was not in line with the prevailing drafting convention and there was no need to include such a mission statement in the proposed Bylaw as it was already contained in the principal ordinance (i.e. WKCDAO). Given DoJ's advice, WKCDA had incorporated the relevant information into the guidelines on the use of WKCD POS for public reference.</p>	

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		Mr Alan LEONG's requests that DoJ should be represented at the next Subcommittee meeting and should provide a written response to his view before the meeting.	Admin (para. 7(a) of the minutes refers)
001731 - 002355	Dr CHIANG Lai-wan WKCD A	<p>Dr CHIANG Lai-wan's view and enquiries as follows:</p> <p>(a) while she was in support of allowing small dogs to be brought into WKCD POS, she had reservations about allowing also large dogs in POS as some POS users might have concern about the safety risks posed by large dogs;</p> <p>(b) whether the staging of street performance in WKCD POS would be subject to any regulation or restriction, so as to minimize possible nuisance to nearby residents; and</p> <p>(c) the opening hours of WKCD POS.</p> <p>WKCD A's advice that:</p> <p>(a) domestic animals were welcomed to be brought into WKCD POS and a person bringing a domestic animal into POS was required under the proposed Bylaw to keep the animal on a lead or under control by other appropriate means at all times. There would also be designated areas separated from POS where domestic animals would be permitted to move around freely without being required to be kept on a lead;</p> <p>(b) while street performance activities might take place at designated locations within WKCD POS, there were certain restrictions on, for instance, the types of amplifiers that could be used by performers and the maximum performance time in the same location, so as to prevent causing disturbance to other POS users. These restrictions were clearly set out in the guidelines for street performance in WKCD which had been published and uploaded onto WKCD A's website. Given the long distance between WKCD POS and the residential buildings around WKCD, WKCD A did not anticipate that the street performance activities in WKCD would cause nuisance to residents living in the area; and</p> <p>(c) except for certain areas to which controlled access might be required for the conduct of events or other operational reasons, WKCD POS would be open 24 hours a day, seven days a week.</p>	
002356 - 002942	Mr CHAN Chi-chuen WKCD A Admin	<p>Mr CHAN Chi-chuen's enquiries as follows:</p> <p>(a) given that there were a number of Government bills that would have to be processed by LegCo in</p>	

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		<p>the remainder of the current term and the Proposed Resolution on the proposed Bylaw, being a Government motion, would be dealt with by the Council only after the proceedings on the Government bills on the Agenda of the Council had been completed under Rule 18(1) of the Rules of Procedure ("RoP"), whether the Administration had worked out a timetable for the moving of the Proposed Resolution in Council to seek LegCo's approval of the proposed Bylaw;</p> <p>(b) the level of powers that would be exercised by WKCDA in managing WKCD POS as compared with that being exercised by the Leisure and Cultural Services Department in managing the public pleasure grounds in Hong Kong; and</p> <p>(c) whether WKCDA would provide unisex toilets in WKCD to cater for the needs of carers and transgender persons and also as a family-friendly facility.</p> <p>The Administration's response that subject to the progress of scrutiny of the proposed Bylaw by the Subcommittee, the Administration aimed to give fresh notice for moving the Proposed Resolution in Council in accordance with RoP to seek LegCo's approval of the proposed Bylaw within the current legislative session.</p> <p>WKCDA's advice that:</p> <p>(a) the proposed Bylaw was structured in such a way that there were minimum restrictions on most activities and WKCDA was provided with the minimum necessary powers to manage WKCD POS for the safe and enjoyable use of all. Since the opening of the Nursery Park in July 2015, WKCDA had adopted a low-key approach in managing the Park through engaging Park Ambassadors to offer advice on the use of the Park to Park users and such an approach had worked well so far; and</p> <p>(b) family toilets would be provided in WKCD for use by persons with different needs.</p>	
002943 - 004016	Ms Cyd HO WKCDA	<p>Ms Cyd HO's concerns regarding the enforcement of the proposed Bylaw as follows:</p> <p>(a) who would be the persons authorized by WKCDA to enforce the proposed Bylaw; and</p> <p>(b) given that persons authorized by WKCDA were empowered under section 23(5) of the proposed Bylaw to use "reasonable force" to remove a person suspected to have contravened the</p>	

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		<p>proposed Bylaw from WKCD POS, what would be considered as "reasonable force" by WKCDA and whether any guidelines/training would be provided to the authorized persons on the use of "reasonable force".</p> <p>WKCDA's advice that:</p> <p>(a) the authorized persons mainly included WKCDA's employees who were responsible for the general management of WKCD POS and provision of information to POS users (e.g. the Park Ambassadors), as well as a small number of security guards engaged through WKCDA's agents for the events held in POS. These authorized persons would be unarmed and in uniform and hence could be clearly identified by POS users; and</p> <p>(b) while the authorized persons would be requested to avoid confrontations with POS users in enforcing the proposed Bylaw and seek to deal with any issue that might arise through discussion and communication, it was necessary to provide them with the minimum necessary powers to intervene where necessary in order to ensure that the activities by any POS user would not excessively interfere with or disturb the use of POS by others. Information on the definition of "reasonable force" and the use of "reasonable force" by the authorized persons would be set out in the relevant guidelines to be published for public information in due course.</p> <p>Ms Cyd HO's request for WKCDA to provide the following information:</p> <p>(a) guidelines, if any, on the use of "reasonable force" by persons authorized by WKCDA;</p> <p>(b) guidelines, if any, on when and how the authorized persons should seek assistance from the Police in enforcing the proposed Bylaw; and</p> <p>(c) details about the "Park Ambassadors" of WKCDA who would be among the authorized persons for managing WKCD POS and enforcing the proposed Bylaw.</p>	<p>WKCDA (para. 7(b) to (d) of the minutes refers)</p>
004017 - 004457	Mr CHAN Chi-chuen WKCDA	In response to Mr CHAN Chi-chuen's enquiry, WKCDA advised that there was no requirement under the proposed Bylaw that a person authorized by WKCDA must seek the assistance of the Police before taking enforcement action against a person suspected to have contravened the proposed Bylaw. Section 23(2) of the proposed Bylaw provided that the authorized person might, after advising a person in	

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		<p>WKCD POS suspected to have contravened the proposed Bylaw of the act that constituted the suspected contravention, require the person to produce proof of identity and state the person's true address for WKCDA to take necessary enforcement action.</p>	
004458 - 005110	Ms Cyd HO WKCDA	<p>Referring to section 10(1) of the proposed Bylaw, Ms Cyd HO sought WKCDA's clarification on the types of events the conduct of which in WKCD POS would require the written permission of WKCDA.</p> <p>WKCDA's advice that generally speaking, events that might pose safety risks would require WKCDA's written permission before they could proceed. To facilitate the conduct of events in WKCD POS in a more dynamic and flexible manner, WKCDA considered it more appropriate not to prescribe specifically in the proposed Bylaw the events the conduct of which would or would not require the written permission of WKCDA. That notwithstanding, WKCDA had uploaded the draft guidelines on the hosting of outdoor events in WKCD POS onto WKCDA's website for public information. WKCDA would assess the events proposed to be held in WKCD POS and exercise flexibility in considering and approving the event applications having regard to the safety of POS users, the need for protecting POS from being overused, as well as other relevant considerations.</p> <p>Ms Cyd HO's expression of agreement with the view of Mr Alan LEONG that it should be expressly stated in the proposed Bylaw that WKCDA should formulate and enforce the proposed Bylaw in ways that aimed to facilitate the performance of its functions and achieve the objectives as set out in section 4 of WKCDAO.</p>	
<i>Agenda Item III - Any other business</i>			
005111 - 005250	Chairman	Invitation for public views and date of next meeting	