

立法會
Legislative Council

LC Paper No. CB(2)1836/15-16
(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 fourth meeting
held on Tuesday, 17 May 2016, at 3:00 pm
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon Christopher CHUNG Shu-kun, BBS, MH, JP (Chairman)
Hon Starry LEE Wai-king, JP
Hon Alan LEONG Kah-kit, SC
Hon MA Fung-kwok, SBS, JP
Hon CHAN Chi-chuen
Dr Hon Elizabeth QUAT, JP
Dr Hon CHIANG Lai-wan, JP
Hon Alvin YEUNG Ngok-kiu

Members absent : Hon Emily LAU Wai-hing, JP
Hon Cyd HO Sau-lan, JP
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, JP
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon CHAN Yuen-han, SBS, JP
Dr Hon Helena WONG Pik-wan
Hon Tony TSE Wai-chuen, BBS

Public Officers attending : Item I

Home Affairs Bureau

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

**Attendance by : Item I
invitation**

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

**Staff in : Ms Vanessa CHENG
attendance** Assistant Legal Adviser 5

Ms Jasmine TAM
Senior Council Secretary (2)8

Miss Meisy KWOK
Legislative Assistant (2)6

Action

I. Meeting with the Administration and the West Kowloon Cultural District Authority

(File Ref: SF(72) to HABCS CR 7/1/99/1/1, LC Paper Nos. CB(3)413/15-16(Appendix 1), LS 37/15-16, CB(2)1066/15-16(01), CB(2)1263/15-16(04)-(05), CB(2)1426/15-16(01) and CB(2)1508/15-16(01))

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

2. The Subcommittee received a briefing by the West Kowloon Cultural District Authority ("WKCDA") on its response to the issues raised at the Subcommittee meeting held on 9 May 2016 (LC Paper No. CB(2)1508/15-16(01)) ("WKCDA's response").

Action

3. The Subcommittee noted that in response to the views and suggestions made by members and the Legal Adviser to the Subcommittee at previous Subcommittee meetings, WKCDA proposed to make the following amendments to the proposed West Kowloon Cultural District (Public Open Spaces) Bylaw ("the proposed Bylaw"):

- (a) insert a defence of reasonable excuse for the offences set out in the sections of the proposed Bylaw referred to by the Legal Adviser to the Subcommittee in her letter dated 5 April 2016 to the Administration (LC Paper No. CB(2)1263/15-16(04)) (i.e. sections 7(2), 8(4), 9(9), 10(9), 12(3), 17(4), 18(3), 22(2), 23(3), 23(6) and 23(8)), as detailed in Annex A to WKCDA's response, and amend the defence in section 16(1) and (3) from "lawful excuse" to "reasonable excuse"; and
- (b) incorporate a preamble to the proposed Bylaw, the revised draft of which was set out in Annex B to WKCDA's response.

4. Members did not raise objection to the draft amendments proposed by WKCDA.

5. The Subcommittee also noted that in the light of members' suggestion at the meeting, WKCDA agreed to also provide a defence of reasonable excuse for those offences set out in sections 11(2), 13(2) and 14(2) of the proposed Bylaw.

6. The Subcommittee continued and completed the examination of the provisions of the proposed Bylaw. The Legal Adviser to the Subcommittee was requested to examine the English text of the proposed Bylaw and of the draft amendments proposed by WKCDA to ensure consistency with the corresponding Chinese text.

7. The Subcommittee agreed that WKCDA be requested to provide for members' consideration a full set of the draft amendments proposed by WKCDA to the proposed Bylaw, and that the draft amendments be circulated to members once available. The Subcommittee also agreed that subject to any further comment members might have on the draft amendments or any issue that members might wish to raise for further discussion, the Chairman of the Subcommittee would decide on the need to hold a further meeting, which was tentatively scheduled for Tuesday, 31 May 2016, at 4:45 pm.

(Post-meeting note: The draft amendments proposed by WKCDA were circulated to members vide LC Paper No. CB(2)1579/15-16 on 25 May 2016. Members were informed vide LC Paper No. CB(2)1594/15-16 on 27 May 2016 that as the Secretariat had not

Clerk to
follow up

Action

received any comment from members on the draft amendments by the specified deadline, the Chairman of the Subcommittee had directed that the meeting tentatively scheduled for 31 May 2016 would not be held. Members were also informed that the Administration would give fresh notice to move a motion (i.e. the Proposed Resolution) at the Council meeting of 29 June 2016 to seek the Legislative Council's approval of the revised proposed Bylaw, and that the Chairman of the Subcommittee would report the deliberations of the Subcommittee to the House Committee on 10 June 2016. Members did not raise objection to the above arrangements.)

II. Any other business

8. There being no other business, the meeting ended at 3:43 pm.

Council Business Division 2
Legislative Council Secretariat
27 June 2016

**Proceedings of fourth meeting of the
Subcommittee on Proposed Resolution under Section 37 of
the West Kowloon Cultural District Authority Ordinance (Cap. 601)
on Tuesday, 17 May 2016, at 3:00 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)/Discussion	Action Required
000628 - 000732	Chairman	The Chairman's opening remarks	
000733 - 000856	Chairman WKCD	<p>Briefing by the West Kowloon Cultural District Authority ("WKCD") on its response to the issues raised at the Subcommittee meeting held on 9 May 2016 (LC Paper No. CB(2)1508/15-16(01)).</p> <p>Members considered and raised no objection to the draft amendments proposed by WKCD to the proposed West Kowloon Cultural District (Public Open Spaces) Bylaw ("the proposed Bylaw") as set out in Annexes A and B to LC Paper No. CB(2)1508/15-16(01).</p>	
<i>Section-by-section examination of the proposed Bylaw</i>			
000857 - 001039	Chairman WKCD ALA5	<p>The Subcommittee continued section-by-section examination of the proposed Bylaw (Appendix 1 to LC Paper No. CB(3)413/15-16).</p> <p><u>Part 4 – Protection of Public Open Spaces and Environment</u></p> <p><i>Section 14 on prohibited acts</i></p> <p>In response to the Legal Adviser to the Subcommittee's enquiry and the Chairman's suggestion, WKCD agreed that apart from providing a defence of reasonable excuse for the offences set out in the sections of the proposed Bylaw referred to by the Legal Adviser to the Subcommittee in her letter dated 5 April 2016 to the Administration (LC Paper No. Cb(2)1263/15-16(04)), it would also provide such a defence for the offences under sections 11(2), 13(2) and 14(2) of the proposed Bylaw.</p>	
001040 - 001214	Chairman WKCD Mr CHAN Chi-chuen	<p><u>Part 5 – Prohibition of Dangerous Goods and Firearms, etc.</u></p> <p><i>Section 15 on dangerous goods, firearms and offensive weapons</i></p> <p>In response to Mr CHAN Chi-chuen, WKCD explained that as it did not contemplate any reasonable excuses for users of the public open spaces ("POS") in the West Kowloon Cultural District ("WKCD") to breach the requirements under section 15(1) of the proposed Bylaw concerning the bringing of dangerous goods, firearms and offensive weapons into POS, it did not consider it necessary or appropriate to insert a defence of reasonable excuse in section 15(2).</p>	

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001215 - 001416	Chairman WKCD Mr CHAN Chi-chuen	<p><u>Part 6 – Public Conveniences</u></p> <p><i>Section 16 on access to public conveniences</i></p> <p>Mr CHAN Chi-chuen enquired whether unisex toilets would be provided in WKCD POS and, if so, whether his understanding that access to such toilets would not be subject to the regulation under section 16 of the proposed Bylaw was correct.</p> <p>WKCD advised that family toilets would be provided in WKCD POS for use by persons with different needs and the provisions under section 16 of the proposed Bylaw would not apply in respect of access to such toilets.</p>	
001417 - 001747	Chairman WKCD ALA5	<p><u>Part 7 – Lost or Misplaced Property</u></p> <p><i>Section 17 on lost or misplaced property</i></p> <p>The Legal Adviser to the Subcommittee's enquiry and WKCD's response on the need to add a refund provision in section 17 of the proposed Bylaw in respect of the handling of lost or misplaced property, details of which were set out in paragraphs 10 to 13 of the Annex to WKCD's reply to the letters of 11 March and 5 April 2016 from the Legal Adviser to the Subcommittee (LC Paper No. CB(2)1263/15-16(05)).</p>	
001748 - 002218	Chairman WKCD Mr MA Fung-kwok	<p><u>Part 8 – Vehicles</u></p> <p><i>Section 18 on prohibition of motor vehicles</i></p> <p>In reply to the Chairman's enquiry, WKCD advised that the bringing of bicycles into POS would not be subject to the regulation under section 18(1) of the proposed Bylaw because bicycle was not a motor vehicle as defined by section 2 of the Road Traffic Ordinance (Cap.374).</p> <p>Mr MA Fung-kwok pointed out that there might be occasions (e.g. major events held in WKCD POS) where arrangements would need to be made for motor vehicles to enter POS. He enquired whether WKCD was empowered under the proposed Bylaw to make such special arrangements.</p> <p>WKCD referred members to section 18(1) of the proposed Bylaw, which provided that "a person must not drive, bring or cause to be driven or brought any motor vehicle into a public open space without permission, except in a car park within the public open space." By virtue of this section, WKCD was empowered to give permission for motor vehicles to be driven or brought into WKCD POS where necessary.</p>	

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002219 - 002304	Chairman WKCDA	<u>Part 9 – Public Transport</u> <i>Section 19 on interpretation</i>	
002305 - 002358	Chairman WKCDA	<i>Section 20 on public service vehicles and private buses</i>	
002359 - 002730	Chairman WKCDA ALA5	<i>Section 21 on application of Road Traffic (Public Service Vehicles) Regulations</i> The Legal Adviser to the Subcommittee's enquiry and WKCDA's response on the following issues, details of which were set out in paragraphs 23 to 26 of the Annex to WKCDA's reply to the letters of 11 March and 5 April 2016 from the Legal Adviser to the Subcommittee (LC Paper No. CB(2)1263/15-16(05)): (a) whether Part IV of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374D) applied to a POS or only designated road as provided for in section 20(1) of the proposed Bylaw; and (b) whether other parts of the Regulations and the Road Traffic Ordinance (Cap. 374) and its other subsidiary legislation applied to a designated road or a POS in WKCD.	
002731 - 002849	Chairman WKCDA ALA5	<i>Section 22 on securing of vessels to wharfs of public open spaces</i> The Legal Adviser to the Subcommittee's enquiry and WKCDA's response on the need to spell out the meaning of "pleasure craft" in the proposed Bylaw, details of which were set out in paragraphs 27 to 29 of the Annex to WKCDA's reply to the letters of 11 March and 5 April 2016 from the Legal Adviser to the Subcommittee (LC Paper No. CB(2)1263/15-16(05)).	
002850 - 003915	Chairman WKCDA Mr CHAN Chi-chuen ALA5	<u>Part 10 – Enforcement</u> <i>Section 23 on enforcement</i> Referring to section 23(5) which provided that an authorized person of WKCDA might use reasonable force to remove a person suspected to have contravened the proposed Bylaw from WKCD POS, Mr CHAN Chi-chuen commented that it might be more appropriate for the authorized person, who presumably would be a staff member of or a security officer engaged by WKCDA, to seek the Police's assistance to remove such person from POS. He also sought information on WKCDA's interpretation of reasonable force, and the training and instructions to be provided by WKCDA to its authorized persons in respect of the use of such force. WKCDA responded that while its authorized persons would be instructed to seek the Police's assistance as necessary and appropriate, there was a practical need for the authorized persons to be empowered under the	

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		<p>proposed Bylaw to use reasonable force in situations where, for reasons of ensuring public safety or order, immediate action had to be taken to remove a person from WKCD POS. Generally speaking, the use of force was to be avoided except when it was absolutely necessary. The authorized persons would be trained to de-escalate a situation through communication and discussion and to use minimum force to remove a person from POS where the situation warranted. Detailed guidelines and proper training (e.g. practice and rehearsal sessions) on incident management, including the use of reasonable force in different situations, would be provided to the authorized persons.</p> <p>The Chairman called on WKCDA to provide adequate training and clear guidelines/instructions to its authorized persons in respect of the use of reasonable force.</p> <p>The Legal Adviser to the Subcommittee enquired whether the "proof of identity" in section 23 of the proposed Bylaw had the same meaning given by section 17B(1) of the Immigration Ordinance (Cap. 115), and if so, whether it should be spelt out in the proposed Bylaw.</p> <p>WKCDA advised that the "proof of identity" in section 23 of the proposed Bylaw carried a broader meaning than that given by section 17B(1) of the Immigration Ordinance (Cap. 115). Under section 23(2) of the proposed Bylaw, an authorized person might require a person suspected to have contravened the proposed Bylaw to produce proof of identity and state the person's true address. For the purposes of this section, the person could produce on the spot documents such as identity card, credit card, electric bill, etc to prove his identity and true address. In WKCDA's view, the meaning of "proof of identify" was clear and it was therefore not necessary to spell it out in the proposed Bylaw.</p>	
003916 - 004305	Chairman WKCDA Mr Alvin YEUNG	<p><i>Section 24 on name in which proceedings for offences may be brought</i></p> <p>In reply to Mr Alvin YEUNG's enquiry, WKCDA advised that while prosecutions for offences under the proposed Bylaw would generally be undertaken by WKCDA on the advice of its own legal adviser, prosecutions for more serious offences involving the Police's intervention would be dealt with by the Department of Justice.</p> <p>Mr Alvin YEUNG reiterated his earlier view that WKCDA should adopt a lenient approach in enforcing the proposed Bylaw and should not institute prosecutions lightly.</p> <p>WKCDA stressed that it would endeavour to seek the cooperation of POS users through communication and</p>	

Time marker	Speaker(s)	Subject(s)/Discussion	Action Required
		discussion and prosecution action would only be taken as a last resort.	
004306 - 004440	Chairman	<p>Completion of examination of the provisions of the proposed Bylaw.</p> <p>The Legal Adviser to the Subcommittee was requested to examine the English text of the proposed Bylaw and of the draft amendments proposed by WKCDA to ensure consistency with the corresponding Chinese text.</p> <p>Members' agreement to the following arrangements:</p> <p>(a) WKCDA be requested to provide for members' consideration a full set of the draft amendments proposed by WKCDA to the proposed Bylaw, and that the draft amendments be circulated to members once available; and</p> <p>(b) subject to any further comment members might have on the draft amendments or any issue that members might wish to raise for further discussion, the Chairman of the Subcommittee would decide on the need to hold a further meeting, which was tentatively scheduled for Tuesday, 31 May 2016, at 4:45 pm.</p>	<p>Legal Adviser to the Subcommittee to follow up</p> <p>Clerk to follow up</p>