

**立法會**  
***Legislative Council***

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

**Background brief prepared by the Legislative Council Secretariat**

**Purpose**

This paper provides background information on the Proposed Resolution under section 37 of the West Kowloon Cultural District Authority Ordinance (Cap. 601) ("WKCDAO") which seeks the approval of the Legislative Council ("LegCo") for the West Kowloon Cultural District (Public Open Spaces) Bylaw ("the proposed Bylaw"). It also gives a brief account of the deliberations of the Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project ("the Joint Subcommittee") on issues relating to the preparation of the proposed Bylaw by the West Kowloon Cultural District Authority ("WKCD").

**Background**

2. The West Kowloon Cultural District ("WKCD") covers an area of about 40 hectares with the provision of 23 hectares of public open spaces ("POS") including the Park. Under section 4(1)(c) of WKCDAO, WKCD is responsible for providing, operating, managing, maintaining or otherwise dealing with arts and cultural facilities as well as related facilities including the POS within WKCD. According to the LegCo Brief issued by the Home Affairs Bureau (File Ref.: SF(72) to HABCS CR 7/1/99/1/1) ("the LegCo Brief"), WKCD endeavours to manage WKCD POS with a light hand and provide a welcoming environment for the pursuit of a wide range of cultural and leisure activities. To facilitate the effective management of WKCD POS for the safe and enjoyable use of all, WKCD has made the proposed Bylaw. The overall objective is to ensure that activities by any user of WKCD POS do not excessively interfere with or disturb other users, with a view to striking a proper balance between the needs of different users.

3. Section 37(1) of WKCDAO empowers WKCDA to make bylaws for one or more of the following purposes -

- (a) for the regulation, operation or management of arts and cultural facilities, related facilities or ancillary facilities; and
- (b) for the conduct of all persons within any premises, buildings, structures, facilities or land (including public places) which the Authority holds or manages, whether within or outside the leased area.

Section 37(2)(c) of WKCDAO provides that all bylaws made by WKCDA are subject to the approval of LegCo.

### **Proposed resolution under section 37 of WKCDAO**

4. The Secretary for Home Affairs ("SHA") has given notice to move a motion ("the Proposed Resolution") at the Council meeting of 16 March 2016 to seek LegCo's approval of the proposed Bylaw made by WKCDA under section 37(1) of WKCDAO. According to the LegCo Brief, the proposed Bylaw seeks to provide for the management, control, operation and use of WKCD POS<sup>1</sup> and for the conduct of persons therein in order to ensure public safety or order and prevent nuisances.

5. At the meeting of the House Committee ("HC") on 26 February 2016, Members agreed to form a subcommittee to study the Proposed Resolution on the proposed Bylaw. At the request of HC, SHA has withdrawn his notice of the Proposed Resolution to allow time for scrutiny by the Subcommittee.

### **Deliberations of the Joint Subcommittee**

6. The Joint Subcommittee discussed issues relating to the management of WKCD POS and WKCDA's preparation of the proposed Bylaw at the meeting on 23 July 2014, and was consulted on the draft of the proposed Bylaw at the meeting on 23 March 2015. The major views and concerns expressed by members of the Joint Subcommittee are summarized in the ensuing paragraphs.

### Approach to the management of WKCD POS and the drafting of the proposed Bylaw

7. When the Joint Subcommittee was briefed on the development of the WKCD Park at its meeting on 23 July 2014, members noted that the West

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<sup>1</sup> An indicative plan of the POS concerned is at Annex 2 of the LegCo Brief. According to the Administration, the POS will be delineated and published by WKCDA for public information.

Kowloon Waterfront Promenade ("the Promenade"), which was part of WKCD POS, was being managed by WKCDA with a set of temporary administrative house rules. Members also noted that the former Subcommittee on the Public Health and Municipal Services Ordinance (Public Pleasure Grounds) (Amendment of Fourth Schedule) (No.2) Order 2012 ("the former Subcommittee") had expressed concern over the arrangement whereby the Promenade was handed over to WKCDA in October 2012 for its control and management under a set of temporary house rules with no legal basis<sup>2</sup>. In response to the former Subcommittee's concerns, WKCDA had undertaken to prepare the relevant bylaw to cater for the opening of the WKCD Park.

8. While appreciating that WKCDA had a responsibility to ensure the safety of the users of WKCD POS, members generally considered that WKCDA should adopt a relaxed and flexible approach in managing POS and the proposed Bylaw should seek to facilitate public enjoyment of POS with minimum restrictions. Members also urged WKCDA to consult the public as well as the arts and cultural sectors in drawing up the proposed Bylaw. Some members suggested that the Administration and WKCDA should also take account of the views expressed in a joint submission from 20 organizations and 280 members of the public (LC Paper No. CB(2)2104/13-14(01)). The joint submission questioned the need for introducing bylaw for the WKCD Park and suggested that a people-centred and collaborative management approach be adopted to allow members of the public to take a more active role in the planning, operation and management of the Park.

9. WKCDA advised that the proposed Bylaw was drawn up having regard to the guiding principle that the use of WKCD POS should be as free and open as possible. Account had also been taken of the vision and mission for the WKCD Park<sup>3</sup>, the views collected through the public survey on the Park management conducted by the Consultation Panel of WKCDA in mid-2014, and the management practices adopted by local and overseas parks and cultural areas. In WKCDA's view, while it would endeavour to manage WKCD POS with a light hand and encourage a wide range of cultural and leisure activities in POS, it would not be in the best interests of public safety and security to have no rules of conduct in place.

10. There was a view that the vision and mission for the WKCD Park should be incorporated into the proposed Bylaw, and it should be expressly stated in the proposed Bylaw that WKCDA should enforce the Bylaw in ways that aimed to achieve such vision and mission. WKCDA explained that it had sought legal advice including the advice of the Department of Justice in the course of drafting the proposed Bylaw. As it was not in line with the prevailing drafting convention to include the vision and mission for the Park in

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<sup>2</sup> Details of the former Subcommittee's deliberations are set out in its report (LC Paper No. CB(2)126/12-13).

<sup>3</sup> According to WKCDA, the vision for the WKCD Park is "a quality green open space that would make Hong Kong proud" and the mission is "a waterfront park to inspire, promote and encourage cultural pursuits for all".

the proposed Bylaw, WKCDA had incorporated information on the Park's vision and mission into the guidelines for the use of WKCD POS.

### The proposed Bylaw

11. Noting that the draft of the proposed Bylaw contained provisions relating to commercial filming and photography, some members enquired how WKCDA would differentiate between commercial and non-commercial filming and photography, particularly in the case of wedding photography. WKCDA advised that while it had no intention to restrict photo-taking by individuals for their own wedding, it would require, for safety reasons, professional wedding photographers/companies seeking to use WKCD POS regularly for photo shoots to register with and obtain permission from WKCDA in advance.

12. Some members expressed concern that the draft of the proposed Bylaw had not dealt with the issue of access to toilet facilities for persons with disabilities, carers and transgender persons. They called on WKCDA to make available unisex toilets in WKCD. There was also a view that as the minimum age of criminal responsibility under the current legislation in Hong Kong was 10, WKCDA should review the relevant provisions in the draft of the proposed Bylaw under which children over the age of five who entered toilets designated for use by the opposite sex would be considered as having committed an offence.

13. According to WKCDA, disabled toilets would be provided in WKCD for use by persons with different needs. Furthermore, in drafting the provisions concerning the access to toilet facilities, careful consideration had been given to the appropriate cut-off age for children who would be allowed to access toilets designated for use by the opposite sex.

14. Members noted that the proposed Bylaw would be enforced by WKCDA's staff or persons authorized by WKCDA. An enquiry was raised as to how WKCDA's staff or authorized persons would determine whether a person had contravened the proposed Bylaw and should be required to leave WKCD POS. Members were also concerned whether WKCDA's staff or authorized persons would be empowered to use force to deal with a person suspected to have committed an offence under the proposed Bylaw, and if so, what were the guidelines and principles governing the use of force.

15. WKCDA stressed that appropriate training would be provided for staff deployed to manage WKCD POS to ensure that they understood not only the proposed Bylaw and other relevant rules and regulations, but also the guiding principle adopted by WKCDA for managing POS, which was to allow public usage as freely as possible while at the same time ensuring public safety.

### Applicability of existing laws to WKCD POS

16. Members were advised that the Pleasure Grounds Regulation (Cap. 132BC) ("PGR") would not apply to WKCD POS as they were applicable only to places which had been gazetted as public pleasure grounds and listed in Schedule 4 to the Public Health and Municipal Ordinance (Cap. 132). However, other existing laws in Hong Kong which regulated conduct or activities in public spaces would, in addition to the proposed Bylaw, apply to WKCD POS.

17. Concern was expressed that given the current wide scope of "public entertainment" and "place of public entertainment" under the Places of Public Entertainment Ordinance (Cap. 172) ("PPEO"), almost all activities to which the general public were admitted might be subject to the regulation of PPEO. An enquiry was raised on whether PPEO was applicable to WKCD POS, and if so, whether the proposed Bylaw or the principal ordinance (i.e. WKCDAO) would have an overriding effect on PPEO.

18. The Administration advised that at present, WKCD or places under the management of WKCDA were not exempt places of public entertainment. Should any event and/or activity held in WKCD, including POS therein, fall within the definition of "public entertainment" under PPEO, a place of public entertainment licence was required to be obtained from the Director of Food and Environmental Hygiene. However, the requirement of the licence under PPEO did not apply to entertainment held in any public place, including WKCD POS, to which the public had right of access and the organizer had no right to control the admission of the public. As both WKCDAO and the proposed Bylaw would have no overriding effect on PPEO, a licence under PPEO was still required if admission to the public entertainment could be controlled.

### **Relevant papers**

19. A list of the relevant papers with their hyperlinks on the LegCo Website is in the **Appendix**.

## Appendix

**Relevant papers on  
Proposed Resolution under section 37 of  
the West Kowloon Cultural District Authority Ordinance (Cap. 601)**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project	23.7.2014 Item II	<a href="#">Agenda</a> <a href="#">Minutes</a>
	23.3.2015 Item I	<a href="#">Agenda</a> <a href="#">Minutes</a>  The Administration's response to members' concerns raised at the meeting <a href="#">CB(2)1467/14-15(01)</a>

Council Business Division 2  
Legislative Council Secretariat  
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