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11 April 2016

Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Chairman of the Subcommittee
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr Chung

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

Meeting on 18 April 2016

I wish to first introduce myself. I am the new Law Draftsman within the Law Drafting Division (**LDD**) of the Department of Justice (**DoJ**).

A copy of the letter written on your behalf to the Secretary for Home Affairs dated 17 March 2016 has been passed to me. It mentions that members have requested that the DoJ be represented at the next Subcommittee meeting and that the DoJ respond, in writing, to the issue set out in item 1 of the Annex.

Item 1 of the Annex states that it is some members' strong view that a provision similar to section 4(2) of the *West Kowloon Cultural District Authority Ordinance* (Cap. 601) should be included in the *West Kowloon Cultural District (Public Open Spaces) Bylaw* to spell out the guiding principle that the use of the public open spaces in the West Kowloon Cultural District (**WKCD**) should be open and accessible wherever possible, and to require that the WKCD Authority should enforce the bylaw in ways which aimed to achieve the mission for the public open spaces to inspire, promote and encourage cultural pursuits for all.

I understand that the item 1 of the Annex issue resulted from a response made to the subcommittee on 14 March 2016 on behalf of the WKCD Authority to the effect that it felt constrained by advice from the LDD to not include a vision or mission statement in the bylaw. There appears to have been a misunderstanding and I believe it may be of assistance to your subcommittee if I were to clarify the LDD's role in relation to the bylaw generally and also specifically in relation to the vision or mission statement issue.

The DoJ is only responsible for providing legal advice or services to the Government, and not to non-Government entities (such as independent statutory bodies). It is therefore a long established practice that the DoJ only undertakes a limited role in relation to legislation (including subsidiary legislation) proposed by non-Government entities. The LDD does not provide drafting services to non-Government entities and does not provide advice to them in respect of (still less decide) the content of their proposed legislation. Rather, the LDD vets the format of the proposed legislation for consistency with the standard format of Hong Kong legislation and for presentational matters (for example, incorrect references, grammatical errors and typos). The LDD may also make such observations as may be appropriate that come to its attention during the vetting process. These observations are made on the basis that non-Government entities are to make their own decisions on, and take responsibility for, their policies and the content of the proposed legislation. The LDD has neither authority over, nor responsibility for, the proposed legislation.

In the case of the *WKCD (Public Open Spaces) Bylaw*, at the request of the responsible policy bureau (namely, the Home Affairs Bureau (**HAB**)), the LDD vetted the proposed format for consistency with the standard format of Hong Kong legislation and for presentational matters. One of the issues identified was that the enacting formula (located immediately after the title heading) included extraneous text relating to the purpose of the bylaw. The enacting formula should simply read as follows:

'(Made by the West Kowloon Cultural District Authority under section 37 of the West Kowloon Cultural District Authority Ordinance (Cap. 601) subject to the approval of the Legislative Council).'

The LDD advised the HAB:

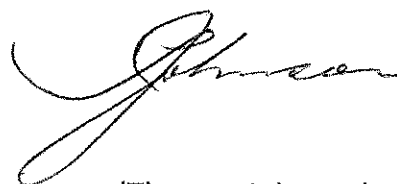
- that inclusion of the extraneous text mirroring section 4(2)(m) of Cap. 601 was inappropriate as an enacting formula contains standard wording merely setting out the enabling provision in the empowering Ordinance
- that section 4(2) of Cap 601 appeared to set out the mission or vision
- that, if the WKCD Authority wished to include a mission or vision in the bylaw (which is a matter not for the LDD to decide), this should be done elsewhere.

A subsequent draft of the bylaw provided to the LDD omitted the text relating to purpose from the enacting formula without inserting any vision or mission elsewhere. The LDD provided no further comment on the issue. Indeed, for the reasons explained above, the inclusion or non-inclusion of this or any other matter in the bylaw is not a matter for the DoJ to decide. Accordingly, I consider it would be inappropriate for me to comment on the issue of spelling out the guiding principle that the use of the public open spaces in the West Kowloon Cultural District (WKCD) should be open and accessible wherever possible, or on the issue of requiring the WKCD Authority to enforce the bylaw in ways aimed to achieve the mission for the public open spaces to inspire, promote and encourage cultural pursuits for all. However, I note that, under section 4(2) of the WKCD Authority Ordinance (Cap. 601), the WKCD Authority is required to perform its functions in ways which aim to achieve the list of objectives set out in that section.

The LDD also shared with the HAB observations that came to the Division's attention during the vetting process. There was a clear understanding with HAB of the LDD's limited role and that the WKCD Authority need only take on board formatting requirements. The WKCD Authority, which had its own independent legal adviser and which had engaged a private firm to draft the bylaw, continued to make its own decisions on the final policy and drafting.

Given the limited role played by the LDD in respect of legislation proposed by non-Government entities, it is not the custom or practice for the Law Draftsman to attend Subcommittee meetings in relation to such legislation. However, having considered the circumstances of this case, I will be happy to make an exception on this occasion and to attend in order to confirm the limited role of the LDD in vetting legislation made by non-Government entities.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Theresa Johnson', with a large, stylized flourish at the end.

(Theresa Johnson)
Law Draftsman

c.c. Secretary for Home Affairs
(Attn: Ms Angela Lee) (Fax: 2598 1496)

Mr Duncan Pescod, GBS, JP
Chief Executive Officer, WKCD (Fax: 2895 1286)