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Dr Hon Tang Siu-tong, JP
Chairman
Legislative Council Panel on Planning, Lands and Works
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear ~~Dr Tang~~, *Siu-tong*,

**Panel on Planning, Lands and Works
and Panel on Home Affairs**

West Kowloon Cultural District

Thank you for your letter of 27 November 2003 setting out certain issues raised by the above Panels concerning the funding arrangements for the West Kowloon Cultural District (WKCD) project, upon which we have taken legal advice.

Mr Abraham Shek's letter to you of 18 November refers to certain allegations in the media to the effect that such funding arrangements may breach the Public Finance Ordinance (Cap. 2). It also poses a number of questions which overlap the issues to which you asked me to respond.

This reply responds to the issues raised.

Compliance with the Public Finance Ordinance

Panel Members asked whether the funding arrangements and/or the accounting arrangements adopted by the Administration for the proposed implementation of the WKCD are in breach of sections 3 and 4 of the Public Finance Ordinance. In essence, those sections provide that moneys raised or received for the purposes of the Government shall form part of the general revenue and that no expenditure shall be charged on the general revenue except as provided under any enactment.

The Invitation for Proposals (IFP) for the development of the WKCD requires that proponents should include in their financial proposals details on the form and projected amount of payment, e.g. land premium, to Government. We intend that any such payment by the successful proponent should be accounted for as general revenue in keeping with section 3 of the Public Finance Ordinance.

The WKCD has been conceived as an integrated and financially self-supporting development of arts, cultural, entertainment and commercial facilities and must be viewed holistically. Accordingly, the Administration has approached it, through the IFP, as a single development package. This approach, as such, does not involve the charging of expenditure on the general revenue. Under such conditions, section 4 of the Public Finance Ordinance will not apply.

Relationship to the Public Works Programme

Panel Members asked how Public Works Programme (PWP) is defined, how the definition takes into account private sector participation in public works projects and whether the WKCD project comes within the PWP.

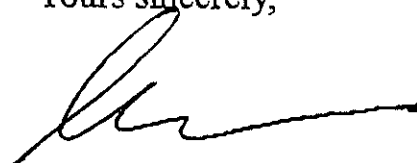
Paragraph 6 of the Memorandum Notes to the Estimates on the Capital Works Reserve Fund (CWRF) sets out that the PWP covers government works projects funded under Heads 702 to 707, 709 and 711 of the CWRF. The scope of the PWP is defined by these sources of funding. The mode of delivery of a project does not determine whether it becomes a PWP item. A private sector participation project can be a PWP item if part of the cost is funded from the CWRF.

The IFP for the WKCD project does not envisage public funding of works within the scheme area. The intention is that all works within the scheme area should be funded by the successful proponent. Therefore, neither the WKCD development nor any part of the development is treated as a project coming within the PWP.

Compliance with Article 64 of the Basic Law

The Government is required to observe the law and to be accountable to the Legislative Council; approval for public expenditure is required in accordance with the law. The arrangements for implementing the WKCD project and to which we have referred earlier, appear to be entirely consistent with Article 64 of the Basic Law.

Yours sincerely,



(Henry Tang)
Financial Secretary

C.C.

Chief Secretary for Administration

Secretary for Housing, Planning and Lands

Secretary for Home Affairs

Secretary for Financial Services and the Treasury