

立法會
Legislative Council

Paper No. WKCD-109
(These minutes have been
seen
by the Administration)

Ref : CB1/HS/2/04

**Subcommittee on
West Kowloon Cultural District Development**

**Minutes of third meeting held on
Wednesday, 16 March 2005, at 8:30 am
in the Chamber of the Legislative Council Building**

Members present : Hon Alan LEONG Kah-kit, SC (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
Hon LEE Wing-tat
Dr Hon KWOK Ka-ki
Hon CHEUNG Hok-ming, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin

- Members absent** : Dr Hon LUI Ming-wah, JP
Hon LAU Wong-fat, GBS, JP
Hon LEUNG Kwok-hung
Hon Albert Jinghan CHENG
- Public Officers attending** : Mr SUEN Ming-yeung, Michael, GBS, JP
Secretary for Housing, Planning and Lands
- Mr HO Chi-ping, Patrick, JP
Secretary for Home Affairs
- Mrs Rita LAU, JP
Permanent Secretary for Housing, Planning and
Lands (Planning and Lands)
- Miss AU King-chi, JP
Deputy Secretary for Housing, Planning and Lands
(Planning and Lands)
- Ms CHIU Yuen-chu, Lolly, JP
Deputy Secretary for Home Affairs
- Mr Vincent FUNG
Principal Assistant Secretary for Home Affairs
- Mr Bosco FUNG, JP
Director of Planning
- Mr Duncan PESCOD, JP
Head, Efficiency Unit
Chief Secretary for Administration's Office
- Mr CHUNG Ling-hoi, JP
Deputy Director of Leisure & Cultural Services
(Acting)
- Mr KWAN Pak-lam, JP
Project Manager/Kowloon
Civil Engineering and Development Department
- Attendance by invitation** : The Hong Kong Institute of Surveyors
- Mr T T CHEUNG
President

Mr Paul HO
Quantity Surveying Division, Vice-Chairman

Clerk in attendance : Miss Odelia LEUNG
Chief Council Secretary (1)4

Staff in attendance : Ms Pauline NG
Assistant Secretary General 1

Mr Watson CHAN
Head (Research and Library)

Ms Bernice WONG
Assistant Legal Adviser 1

Ms Vicky LEE
Research Officer 3

Mr Thomas WONG
Research Officer 4

Ms Alice AU
Senior Council Secretary (1)5

Mr Anthony CHU
Council Secretary (1)2

Miss Michelle NIEN
Legislative Assistant (1)3

Action

I Confirmation of minutes
(Paper No. WKCD-100 -- Minutes of meeting on
21 February 2005)

The minutes of the meeting held on 21 February 2005 were confirmed.

II Meeting with the Administration and the Hong Kong Institute of Surveyors (HKIS)

(Paper No. WKCD-103 -- Information paper on “West Kowloon Cultural District and Public Private Partnerships” provided by Administration

Paper No. WKCD-101 -- List of follow-up actions required by

- the Administration arising from the meeting on 21 February 2005
- Paper No. WKCD-104 -- Information note on “Management, operation and financing of a cultural district” prepared by the Research & Library Services Division
 - Paper No. WKCD-54 -- Submission dated February 2004 from HKIS
 - Paper No. WKCD-55 -- Second submission dated 31 January 2005 from HKIS
 - Paper No. WKCD-81 -- List of information to be provided by the Administration
 - Paper No. WKCD-83 -- The Efficiency Unit’s publication entitled “Serving the Community by using the private sector: An introductory guide to Public Private Partnerships” (the Introductory Guide) dated August 2003
 - Paper No. WKCD-95 -- Chinese translation of Annex A to the Introductory Guide
 - Paper No. WKCD-92 -- Chinese translation of Annex B to Introductory Guide
 - Paper No. WKCD-94 -- The Efficiency Unit’s booklet entitled “Serving the community by using the private sector” dated June 2001
 - Paper No. WKCD-102 -- Research Report on “Public Private Partnerships” prepared by Research & Library Services Division for the Panel on Planning, Lands and Works
 - Paper No. WKCD-45 -- Information note on “Public Private Partnership Cases involving Land Development in the United Kingdom and the United States” prepared by the Research & Library Services Division
 - Paper No. WKCD-47 -- Information note on “Financial Study on the West Kowloon Cultural District” prepared by the Research & Library Services Division)

2. Members noted that there was a typographical error in page 10 of the English version of the Information Note on “Management, operation and financing of a cultural district” prepared by the Research & Library Services Division (Paper No. WKCD-104).

(Post-meeting note: A replacement sheet was tabled at the meeting and subsequently issued to members vide LC Paper No. CB(1)1122/04-05.)

3. Members also noted that as the two Bureau Secretaries would have to attend a special meeting of the Executive Council, they would leave the meeting at 9:30 am.

4. The Subcommittee deliberated (Index of proceedings attached at the **Annex**).

5. The Secretary for Housing, Planning and Lands informed members that taking into account the views of members and having reviewed the progress made in the public consultation exercise, the Administration had decided to extend the public consultation on the development of the West Kowloon Cultural District (WKCD) to the end of June 2005. The main exhibition on the screened-in proposals would also be extended and moved to the Hong Kong Heritage Museum in Sha Tin from mid-April to the end of June 2005.

Public-Private-Partnerships (PPPs)

6. Members raised questions on the information paper provided by the Administration on “West Kowloon Cultural District and Public Private Partnerships” (Paper No. WKCD-103) and the Efficiency Unit’s publication entitled “Serving the Community by using the private sector: An introductory guide to Public Private Partnerships” (the Introductory Guide) (Paper No. WKCD-83). The Administration responded.

7. Representatives of HKIS presented the Institute’s submission dated 16 March 2005 which was tabled at the meeting (and subsequently issued to members vide Paper No. WKCD-105). Their major observations on the Government’s approach of developing the WKCD as a PPP project were summarized as follows:

- (a) Many of the good principles and practices developed in other countries for PPP projects had been neglected, leading to wide criticisms by the public.
- (b) The fundamental issue in question was what sort of guiding principles for PPP projects the Government should have followed, but had not followed.
- (c) Should the Government have carried out value-for-money assessment at the early stage of the project, the Government should be able to justify that the PPP approach would offer value-for-money and that there should be no “transfer of interest” as alleged by the public. More fundamentally, the best value assessment could not be run in parallel or at the end of the procurement stage. Otherwise, there was no agenda for

questioning the basis of the PPP project.

- (d) The Government should be aware that when it cited commercial confidentiality as the reason to refuse disclosure of information and hence, limit the extent of public consultation, its democratic accountability would be weakened.
- (e) Given the large scale of the WKCD project, the single-package development approach might restrict the number of bidders, thus placing the Government in an unfavourable position in negotiating the best deal. Under such circumstances, the Government might not be able to demonstrate value-for-money.

8. Members thanked HKIS for their valuable opinion.

9. Members in general were gravely concerned as to whether the Administration had followed the principles and the structured framework specified in the Introductory Guide in planning the development of WKCD as a PPP project, including, *inter alia*, the construction of a Public Sector Comparator (PSC) to assess value-for-money, the development of a business case to assess cost benefits and risk allocations, etc. To facilitate members' consideration as to whether the WKCD project as proposed by the Administration could meet the requirements of efficiency, equity and accountability and that it offered the best value-for-money, the Administration should disclose all relevant details of its internal assessments.

10. While noting members' concern, the Administration reiterated its undertaking that it would make public all relevant financial information including the Administration's own assessments in arriving at the baseline requirements in the Invitation for Proposals, the financial information contained in the screened-in proposals as well as the Administration's assessment on the screened-in proposals as soon as disclosure of such information would not compromise or prejudice the Government's negotiation position. The Government would also consult the Legislative Council before signing any agreement.

Admin 11. To facilitate members' consideration, the Administration was requested to provide itemized response to the following in writing before the next meeting:

- (a) which department was responsible for preparing the PSC for the WKCD development;
- (b) how long would it take to prepare PSC for projects of the same scale and magnitude of the WKCD;
- (c) what information should be available in order that a proper PSC

could be prepared? Should the specific requirements of the structure and facilities be available before the PSC could be prepared;

- (d) how far the details of the specific requirements for the facilities of WKCD were available at the time when the cost-benefit analysis was carried out;
- (e) whether and how the cost-benefit analysis was put to top government officials for vetting/endorsement before the project in the proposed manner was decided and announced (information to be provided should include relevant dates);
- (f) details of cost-benefit analysis for undertaking the WKCD as a PPP project as against the conventional procurement approach both in terms of the construction and the operation of the proposed arts and cultural facilities; reasons as to why the private sector would be in a better position to build, operate and manage arts and cultural facilities in the WKCD;
- (g) details of risk analysis for undertaking the WKCD as a PPP project, and possible measures to guard against default;
- (h) how could the Government maintain control over and ensure accountability for the WKCD development throughout its course of development if a set of specific deliverables were not available;
- (i) a list of procedural steps for the development of the WKCD project complying fully with the guidelines specified in the Introductory Guide;
- (j) with reference to Chapter 6 of the Introductory Guide, the measures to be put in place by the Government to safeguard against the 18 identified problems for PPPs;
- (k) EU's advice as to what further processes the Government should take in the latter stages so that the WKCD project could be put on the right PPP track as specified in the Introductory Guide;
- (l) details of local or overseas PPP projects which were comparable to the nature and scale of the development of WKCD. For the cited reference cases of the Science Park, the Hong Kong International Airport and railway development and other cases quoted by the Government, whether any PSC had been constructed ; and what were their similarities and differences;

- (m) the Government's role and public accountability for the development of arts and culture in Hong Kong;
- (n) the Government's stance on funding of the arts and cultural components through proceeds from land sales/grant of the WKCD;
- (o) the Government's stance on adopting a multiple-level bidding approach for the WKCD development;
- (p) provide a formal response to the submissions dated 31 January and 16 March 2005 respectively from HKIS, including the Institute's suggestion that the tenure of the operation agreement could be subject to review or satisfactory performance; and
- (q) provide a formal response to the Information Note on "Management, operation and financing of a cultural district" prepared by the Research & Library Services Division (Paper No. WKCD-104).

12. Ir Dr Raymond HO commented that in view of the wide scope of areas to be covered, the Subcommittee might need to consider holding longer meetings in future.

13. Ms Emily LAU suggested that HKIS should be invited to give comments, if any, on the Information Note on "Management, operation and financing of a cultural district" prepared by the Research & Library Services Division (Paper No. WKCD-104).

III Any other business

14. Members agreed that the next meeting of the Subcommittee would be held on Wednesday, 23 March 2005 at 10:45 am to continue discussion with the Administration on PPP.

15. The Chairman reminded members that the fifth and sixth meetings of the Subcommittee would be held on 8 and 22 April 2005 respectively.

16. The meeting ended at 10:40 am.

**Proceedings of the third meeting of the
Subcommittee on West Kowloon Cultural District Development
on Wednesday, 16 March 2005, at 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000020	Chairman	Confirmation of minutes of the meeting held on 21 February 2005 (Paper No. WKCD-100)	
000021 - 000547	Chairman Ms Emily LAU	Opening remarks	
000548 - 001012	Administration	<u>Public Private Partnerships (PPPs)</u> - Presentation of the Administration's paper (Paper No. WKCD-103) - Extension of the public consultation	
001013 - 002358	Mr LEE Wing-tat Administration Chairman	- Need for PPP projects to have community endorsement and approval from the Legislative Council (LegCo) - Need to put in place safeguards against the 18 problems identified in the Efficiency Unit's Introductory Guide (Paper No. WKCD-83) at an early stage - The Efficiency Unit's explanation on the objective and application of the Introductory Guide - The Administration's explanation that: (a) it would formulate suitable measures to guard against possible problems at a later stage taking into account the guidelines specified in the Introductory Guide; and (b) it would take into account the guidelines specified in the Introductory Guide when drafting the provisions in the final agreement with the successful proponent.	The Administration to provide information as per paragraph 11 (j) of the minutes.

Time marker	Speaker	Subject(s)	Action required
002359 - 003838	Ms Emily LAU Administration	<ul style="list-style-type: none"> - Implication of a new Chief Executive on the West Kowloon Cultural District (WKCD) development - Need to ensure value-for-money of the WKCD development including the construction of a Public Sector Comparator (PSC) - Safeguard against default by the successful proponent taking into account the magnitude of the WKCD project - The Administration's explanation that: <ul style="list-style-type: none"> (a) in order to achieve the policy objectives of developing partnership between the Government and the private sector, as well as between developers and the cultural sector, the Government had decided to adopt a PPP approach in the development of the WKCD; (b) detailed arrangements for PPPs should be crafted individually to suit particular circumstances. In the case of the WKCD, maximum flexibility had been built in the Invitation for Proposals (IFP) process to encourage innovation by the private sector, and to allow the Government to shape the WKCD through the process. Hence, it would be difficult to make a direct comparison between the WKCD project and other PPP projects; and (c) one of the policy objectives of the WKCD was to enrich the cultural life of the local community. This might not be easily quantifiable in monetary terms. 	The Administration to provide information as per paragraph 11(a) to (f) of the minutes.

Time marker	Speaker	Subject(s)	Action required
003839 - 005606	Ms Margaret NG Administration	<ul style="list-style-type: none"> - Adherence of the principles and structural framework specified in the Introductory Guide in planning the development of WKCD as a PPP project - The WKCD project was not simply to develop arts and cultural facilities, it was comparable to a large-scale town planning exercise - Local or overseas precedents on developing a new district using PPP mode - Need to set specific indicators and deliverables for each stage of the WKCD project to ensure government control and accountability 	The Administration to provide information as per paragraph 11(h), (i) and (l) of the minutes.
005607 - 010120	Mr Patrick LAU Administration	<ul style="list-style-type: none"> - Whether the Administration had conducted its own financial analysis on the WKCD development as a baseline for comparison with the three screened-in proposals - Progress of the assessment process - The Administration's undertaking as regards disclosure of financial information 	
010121 - 011330	Chairman The Hong Kong Institute of Surveyors (HKIS) Administration	Presentation of HKIS' submission (Paper No. WKCD-105)	
011331 - 012327	Mr Albert CHAN Administration	<ul style="list-style-type: none"> - Whether PPP approach was appropriate for the WKCD development - Cost-benefits of undertaking the WKCD as a PPP project - Lack of transparency in the assessment process - The Administration's explanation that: <ul style="list-style-type: none"> (a) the assessment criteria had been set out clearly in the IFP; and 	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) arrangements would be made to ensure that a reasonable amount of profits from the commercial components of the WKCD development would be used to support arts and cultural development and the operation of arts and cultural facilities. Details would be provided to members at a later stage.</p>	
012328 - 012537	Chairman	Whether it was appropriate to adopt a PPP approach for the WKCD development which in effect was town planning	
012538 - 014948	Ms Audrey EU HKIS Administration	<ul style="list-style-type: none"> - Financial studies conducted by the Government to assess value-for-money and cost benefits before deciding to adopt a PPP approach for the WKCD - Arts and cultural facilities should not be regarded as financially freestanding - Contingency plan in case of default or bad performance - The Administration's public accountability for arts and cultural development - Time allowed for LegCo members to scrutinize the financial information before the Government entered into a project agreement with the successful proponent - The Administration's explanation that: <ul style="list-style-type: none"> (a) studies had been conducted to evaluate the cost of providing the proposed arts and cultural facilities and land premium; (b) requirements on financial arrangements to be made by the successful proponent to ensure sustainable operation 	The Administration to provide information as per paragraph 11(g) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>of the WKCD; and</p> <p>(c) difficulties encountered by the Administration to come up with a realistic PSC for the commercial components of the WKCD.</p>	
014949 - 020240	<p>Chairman Ir Dr Raymond HO Mr Albert HO Mr Abraham SHEK Ms Emily LAU Ms Margaret NG</p>	<p>Issues that the Administration should respond to before the next Subcommittee meeting:</p> <ul style="list-style-type: none"> - Compliance of the WKCD development with the Introductory Guide - Government's role and public accountability for the development of arts and culture in Hong Kong - Government's stance on multiple-level bidding - HKIS' submissions - Information Note on "Management, operation and financing of a cultural district" 	<p>The Administration to provide information as per paragraph 11 (k), (m) to (q) of the minutes.</p>
020241 - 020403	Chairman	<p>Date of next meeting Schedule of future meetings</p>	