

**LEGISLATIVE COUNCIL HOUSE COMMITTEE**  
**Subcommittee on West Kowloon Cultural District Development**

**West Kowloon Cultural District and Public Private Partnerships**

**Purpose**

This paper compares the Introductory Guide to Public Private Partnerships (PPP guide) issued by the Efficiency Unit in August 2003, and the procedures adopted by the Administration for the development of the West Kowloon Cultural District (WKCD). It also addresses a Member's enquiry made at the second meeting of the Subcommittee about the role of the Town Planning Board in the development of the WKCD.

**Introductory Guide to Public Private Partnerships**

2. The PPP guide was issued by the Efficiency Unit in 2003. It presents the basic public private partnership (PPP) concepts and provides general guidance in the context of Hong Kong's established legislation, policies and procurement practices for the implementation of PPPs. It seeks to encourage both the public and the private sectors to explore the use of PPPs for both traditional and innovative projects.

3. There are many different approaches possible under the PPP spectrum. It has been made clear in the PPP guide (p.1) that "the detailed arrangements for PPPs can and should be crafted individually to suit the particular circumstances that are encountered in each instance". The key to success is to match the right approach to the specific circumstances faced and the objectives desired in each case.

**Development of the West Kowloon Cultural District**

4. Through the development of the WKCD, the Administration seeks to foster a long term relationship between the Government and the private sector in the development of world class arts and cultural facilities, the provision of high quality arts and cultural programmes and the preservation and promotion of local cultural heritage by bringing in the

private sector's financial strength and commercial knowledge and expertise. Combining arts and culture with cutting-edge design, popular entertainment and hip retail outlets, the WKCD will draw people from all sectors of the community as well as attract international visitors. The creative industries and commercial sector will complement each other and bring in sustainable revenues. With the commercial sector's flexibility, innovation and room to manoeuvre, the WKCD can introduce a creative management strategy and draw in management expertise, adding a metropolitan feel to the cultural district. Under this new management concept, arts and culture will co-exist with commerce and entertainment on a mutually beneficial basis.

5. More importantly, apart from the partnership between the Government and the private sector mentioned in paragraph 4, the development of the WKCD will foster a partnership between the business sector and the arts and cultural sector in the promotion of the arts. In the Cultural and Heritage Commission Policy Recommendation Report (CHC Report) published in early 2003, the Culture and Heritage Commission (CHC) expressed its support for the development of the 40-hectare site at the southern tip of West Kowloon into an integrated arts, cultural and entertainment district. The CHC recommended that emphasis should be given to the principle of "partnership" in the planning and development of the WKCD. CHC Report also stressed that the Government should facilitate partnerships between developers and the cultural sector, allowing the latter to participate in the planning and operation of the cultural facilities. The Government has accepted these CHC recommendations. To achieve these policy objectives, the Administration decided to adopt a PPP approach in the development of the WKCD.

## **Comparison**

6. The development process of the WKCD complies fully with the guiding principles stated in the PPP guide. The project satisfies the common elements of the PPPs, such as "design, build and maintain", usually involving large scale and high value facilities/services, long contracts and optimal allocation of risks and rewards between the public and private sectors. In line with the PPP guide, the development process has been carefully crafted to suit the specific circumstances of this unique, large-scale and complex project. In particular, maximum flexibility has been built in the Invitation for Proposals (IFP) process so as to encourage

innovation by the private sector, and to allow the government to shape the WKCD through the process. More detailed arrangements will be developed and prescribed as the project evolves, based on the assessment of proposals and public consultation, in order to ensure that the WKCD will take a shape that meets public need.

7. A comparison between the PPP guide and the procedures adopted for developing the WKCD is at Annex.

### **Role of the Town Planning Board**

8. The role of the Town Planning Board in the development of the WKCD is set out in paragraphs 74 to 79 in the right hand column of the Annex.

**Housing, Planning and Lands Bureau**  
**Home Affairs Bureau**

**March 2005**

**Legislative Council House Committee  
Subcommittee on the Development of West Kowloon Cultural District**

**Comparing the Introductory Guide to Public Private Partnerships issued in August 2003 with  
the Procedures adopted for Developing the West Kowloon Cultural District**

Legend

- PPP guide – “Serving the Community by Using the Private Sector - The Introductory Guide to Public Private Partnerships” issued by the Efficiency Unit in August 2003
- WKCD – The West Kowloon Cultural District
- IFP – The Invitation for Proposals for the Development of the WKCD issued in September 2003
- Blue – Procedures that comply with the PPP guide
- Red – Procedures that are variations to the PPP guide
- Green – Procedures that are extraneous to the PPP guide
- Pale Blue – Procedures in the PPP guide that will be adopted in future stages of the IFP exercise

Procedures proposed in the PPP guide	Procedures adopted for developing the WKCD
I. <i>Decision on the use of PPP approach</i>	
<ul style="list-style-type: none"> <li>● conduct feasibility study, needs analysis and market testing (p.9, 62)</li> </ul>	<ol style="list-style-type: none"> <li>1. The following survey/studies have been taken into account by the Government in the development of the WKCD – <ul style="list-style-type: none"> <li>➤ “Study on the Feasibility of a New Performance Venue for Hong Kong” commissioned by the then Hong Kong Tourist Association in 1998</li> <li>➤ “Cultural Facilities: A Study on their Requirements and the Formulation of New Planning Standards and Guidelines” commissioned by the Planning Department in 1999</li> <li>➤ “Consultancy Study on the Provision of Regional/District Cultural and Performance Facilities in Hong Kong” commissioned by the Home Affairs Bureau and the Leisure and Cultural Services Department in 2002</li> <li>➤ “Culture and Heritage Commission Policy Recommendation Report” issued by the Culture and Heritage Commission in 2003</li> <li>➤ Consultancy Study on the Mode of Governance of Hong Kong’s Public Museums and the Hong Kong Film Archive” commissioned by the Leisure and Cultural Services Department in 2003</li> </ul> </li> <li>2. As referred to in the Foreword of the PPP guide, enhancing radically the use of the private sector in delivering government services will help address demands for more and better public services. One of the stated arts and cultural objectives of the WKCD development is to encourage private sector participation in the rendering of cultural services in Hong Kong. The arts and cultural facilities in WKCD can and should be run with greater commercial expertise than the Government is able to provide.</li> </ol>

<ul style="list-style-type: none"> <li>● the PPP guide does not refer to the need for an open competition</li> </ul>	<p>3. To achieve the best master planning for the WKCD site, the Government held an international competition in 2001 to invite conceptual proposals for the development of the site. A total of 161 entries were received. They were assessed by a non-government international panel of ten judges. The winner, the first runner-up and three outstanding prize-winning entries were announced on 28 February 2002. The first-prize winner was a team led by Foster and Partners. Subsequently, the Steering Committee for the Development of the WKCD announced in October 2002 that the winning design would be adopted in principle as the basis of the masterplan for WKCD.</p>
<ul style="list-style-type: none"> <li>● the PPP guide does not require a high-level committee</li> </ul>	<p>4. In September 2002, the Government established the Steering Committee for the Development of the WKCD to co-ordinate Government's input to the West Kowloon Cultural District project and monitor project implementation. It is chaired by the Chief Secretary for Administration, and comprised the Secretary for Housing, Planning and Lands, Secretary for Home Affairs, Secretary for Environment, Transport and Works, Secretary for Financial Services and the Treasury, and relevant Government officials. (Please see also paragraph 47).</p> <p>5. Feasibility studies have been conducted, covering the financial aspects and an assessment of the project's attractiveness to the private sector. The studies are inevitably preliminary as specific features of the WKCD project are being developed and shaped through the IFP process.</p> <p>6. These studies involved financial assumptions adopted by the Government. Premature disclosure of these studies may weaken the Government's position in future negotiations with the proponents, making it impossible for the Government to secure a package that is in the best interest of the public. In this regard, we are prepared to arrange for disclosure of relevant information before signing any provisional agreement with the successful proponent, subject to Government's negotiation position not being compromised.</p>

<ul style="list-style-type: none"> <li>● assess whole life costs (p.7)</li> </ul>	<p>7. Please refer to paragraph 5.</p>
<ul style="list-style-type: none"> <li>● should satisfy itself that good value for money would be achieved (p.10)</li> </ul>	<p>8. The Government continues to endeavor to achieve good value for money. We took into consideration various studies before the launch of the IFP. We devised the IFP requirements and the assessment criteria in accordance with our policy objectives for developing the WKCD (please see paragraphs 4 and 5 of the paper). We will put in place optimal risk allocation arrangements; maintain a fair, open and competitive bidding process; negotiate with the proponent(s) for the best possible deal; and continue to monitor the private sector's delivery of services.</p>
<ul style="list-style-type: none"> <li>● explain the project to interested and affected parties (p.10)</li> </ul>	<p>9. The Government has been consulting interested and affected parties as well as the community at large by phases. So far there have been three phases of consultation, namely, before the launch of the IFP, after the launch of the IFP but before the receipt of proposals, and after the receipt of proposals.</p> <p><u>Before the launch of the IFP in September 2003</u></p> <p>10. In 2000, that is before launching the international competition mentioned in paragraph 3 above, we consulted the real estate sector, the relevant professional institutes, and the arts and cultural sector. Briefing sessions were held for the Town Planning Board (TPB) and other relevant statutory bodies.</p> <p>11. In 2002, the Government held open exhibitions at various venues across the territory. The winning entries in the international competition were displayed. The Yau Tsim Mong District Council, the TPB and other relevant statutory bodies were briefed on the outcome of the competition.</p> <p>12. Also in 2002, we consulted the arts and cultural community before deciding upon the core arts and cultural facilities to be included as mandatory requirements in the IFP.</p>

<ul style="list-style-type: none"> <li>● the PPP guide does not prescribe such detailed consultation arrangements. It does not require public consultation on the proposals, let alone the engagement of independent consultant</li> </ul>	<p><u>After the launch of the IFP but before the receipt of proposals in June 2004</u></p> <p>13. We met the cultural sector on various occasions to discuss the contents of the project and listen to their views. From late 2003 to early 2004, the Home Affairs Bureau organised a large-scale brainstorming session and eight focus group meetings. The Housing, Planning and Lands Bureau and the WKCD Development Project Co-ordination Office also met relevant professional bodies to gauge their views. Briefing sessions were held for the Yau Tsim Mong District Council, the TPB, academic institutions, youth groups and other relevant statutory bodies. At the same time, we also attended forums organised by other groups. We have taken into account the views collected in devising the detailed assessment arrangements.</p> <p><u>After the receipt of proposals in June 2004</u></p> <p>14. In March 2004, in view of community interest in the development, the Government announced that it would consult the public on the screened-in proposals for the development of the WKCD. The public consultation aims to help the public better understand the screened-in proposals and facilitate an informed discussion.</p> <p>15. The public consultation includes exhibitions displaying the proposals, discussion forums and separate briefing sessions for the Legislative Council and relevant statutory and advisory bodies. It was launched in mid December 2004 and is now ongoing. In parallel, the Secretary for Home Affairs is attending District Council meetings to listen to Councillors' views on the project.</p> <p>16. To enhance credibility of and public confidence in the public consultation, the Government has appointed the Public Policy Research Institute of the Hong Kong Polytechnic University as an independent consultant to analyse public views received, including views received from comment cards, discussion forums, meetings with statutory and advisory bodies including the Legislative Council and District Councils, and all written submissions. The consultant is also tasked to conduct telephone polls during the public consultation period and analyse the results to gauge and triangulate public views collected via different</p>
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<ul style="list-style-type: none"> <li>● project involving land grant for less than the paid-up market value would normally require consultation with the Legislative Council (p.10)</li>   <li>● it is possible that a financially free-standing project would require no formal legislative or financial approvals from the LegCo (p.10)</li> </ul>	<p>17. Since 1999, we have briefed Legislative Council Members on the progress made in every key stage of the project.</p> <p><u>Before the launch of the IFP</u></p> <p>18. On 18 November 1999, the Government briefed the Panel on Planning, Lands and Works on its decision to develop the southern portion of West Kowloon into a world-class integrated arts, cultural and entertainment district, and to delete part of a then existing works contract for a road and infrastructure. All these were endorsed by Panel Members.</p> <p>19. On 13 December 1999, the Government informed the Panel on Home Affairs of its decision to develop the southern portion of West Kowloon into a world-class integrated arts, cultural and entertainment district. The endorsement of Panel Members was obtained.</p> <p>20. On 9 March 2000, the Government briefed Members of the Panel on Planning, Lands and Works on the details of the international competition (see paragraph 3) and the idea was supported by the Panel.</p> <p>21. On 8 May 2002, the Government submitted the Foster design, the first prize winner, and other four winning submissions to the Panel on Planning, Lands and Works.</p> <p>22. On 4 July 2003, the Government briefed the Panel on Planning, Lands and Works that an IFP for the WKCD project would be issued to interested developers. The core requirements in the IFP were set out in the paper issued to Members. We received positive and supportive response from Members.</p> <p><u>After the launch of the IFP and before the receipt of proposals</u></p> <p>23. On 18 and 25 November 2003, the Government further briefed the Panel on Home Affairs and Panel on Planning, Lands and Works on the IFP.</p>

24. On 26 November 2003, the Government set out its stance during a motion debate on the WKCD project.
  25. The Government briefed the Panel on Planning, Lands and Works on the progress of the project on 27 April 2004.
- After the receipt of proposals
26. The Government briefed Members of the Panel on Planning, Lands and Works on the progress on 14 July 2004 and 26 October 2004.
  27. The Chief Secretary for Administration announced the screening result at the sitting of the Legislative Council on 9 November 2004.
  28. On 30 November 2004, the Government briefed the Panel on Planning, Lands and Works on public consultation arrangements and discussed with Members various issues concerning the WKCD.
  29. On 6 December 2004, the Chief Secretary for Administration wrote to all Members explaining Government's position on the disclosure of financial information contained in the proposals.
  30. After the public consultation was launched, the Government has arranged for Members to visit the exhibition on 16 December 2004. In the afternoon of the same date, the proponents were arranged to present their proposals to the Panel on Planning, Lands and Works. The Government attended that meeting to listen to Members' views.
  31. On 6 January 2005, the Government set out its position on various important issues during a motion debate on the WKCD project.

	<p>32. On 10 January 2005 and 17 January 2005, the Chief Secretary wrote to the Chairman of the House Committee and all Legislative Council Members respectively, explaining further Government's position on disclosure of financial information.</p> <p>33. On 31 January 2005, the Government attended the Panel on Planning, Lands and Works meeting on WKCD.</p> <p>34. On 18 February 2005, the Chief Secretary for Administration discussed with the House Committee issues concerning the WKCD.</p> <p>35. On 21 February 2005, the Government attended the second meeting of the Subcommittee on the Development of WKCD.</p>
<ul style="list-style-type: none"> <li>● negotiate the best terms with more than one bidder (p.10)</li> </ul>	<p>36. Please refer to paragraph 57.</p>
<ul style="list-style-type: none"> <li>● if detailed negotiations are conducted with more than one bidder, should decide whether to negotiate on the basis of a set of common terms (p.11)</li> </ul>	<p>37. Please refer to paragraph 57.</p>
<ul style="list-style-type: none"> <li>● should consider whether proposals for enhanced facilities/services or other commercial facilities are acceptable (p.12)</li> </ul>	<p>38. Please refer to paragraph 50.</p>
<ul style="list-style-type: none"> <li>● if other facilities are accepted, any constraints to their acceptability should be made clear to all concerned during</li> </ul>	<p>39. Please refer to paragraph 50.</p>

<p>public consultation and in the “request for proposals” (RFP) documentation (p.11, 12)</p>	
<ul style="list-style-type: none"> <li>● if private partner may keep income from the additional facilities/services, must provide sufficient control to ensure delivery of core services will not be distracted (p.12)</li> </ul>	<p>40. Please refer to paragraphs 59 and 82.</p>
<ul style="list-style-type: none"> <li>● client department should satisfy itself concerning sharing the benefits arising from the non-core services and fees charged to the public (p.12)</li> </ul>	<p>41. Please refer to paragraphs 82.</p>
<ul style="list-style-type: none"> <li>● if land sale is involved, the policy regarding an administrative ban for major modifications within five years of land sale (p.12)</li> </ul>	<p>42. Land administration matters are set out in the IFP. No land sale is expected under the IFP.</p>
<p><i>II. Procedures</i></p>	
<ul style="list-style-type: none"> <li>● assess whether and how the proposal will affect the budgetary expenditure guidelines, and whether revenue will be diverted to the private sector or otherwise hypothecated (p.13)</li> </ul>	<p>43. The WKCD project is financially freestanding. We expect that the private sector, with their business know-how and experience, will develop and operate the whole WKCD in a self-financing mode. It does not involve public expenditure and thus would not affect the budgetary expenditure.</p>

<ul style="list-style-type: none"> <li>● impose controls over the private partner's accountability to the client department for up-to-standard performance (p.14)</li> </ul>	<p>44. Please refer to paragraph 59.</p>
<ul style="list-style-type: none"> <li>● select duration of contract according to best value for money (p.14)</li> <li>● a long-term relationship is established, typically between 10 years and 30 years, depending on the nature of the facilities, assets or services to be delivered (p.4)</li> </ul>	<p>45. The 30-year operation period for the core arts and cultural facilities in the WKCD is in line with other PPP projects. It would help promote a sustainable long term partnership between the business sector and the arts and cultural community.</p>
<ul style="list-style-type: none"> <li>● shorter contract periods than the design life of the asset could ensure a valuable residual interest in the asset available to Government (p.14)</li> </ul>	<p>46. The design life of the core arts and cultural facilities will be longer than the 30-year operation period laid down in the IFP.</p>
<ul style="list-style-type: none"> <li>● establish an Intelligent Client Team with a strong in-house team and appropriate external advisory support to oversee project progress from start to completion (p.15, 62)</li> </ul>	<p>47. The Government has set up the Steering Committee for the Development of the WKCD. The Steering Committee is supported by, inter alia, the Proposals Evaluation Committee chaired by Permanent Secretary for Housing, Planning and Lands (Planning and Lands), and the Public Consultation Committee co-chaired by the Permanent Secretary for Housing, Planning and Lands (Planning and Lands) and the Permanent Secretary for Home Affairs. External consultants have been engaged where necessary. For example, a financial advisor has been appointed to assist in the analysis of financial proposals and a consultant is engaged to advise on the analysis of public views collected during public consultation. (Please see paragraph 16.)</p>

<ul style="list-style-type: none"> <li>● consider engaging with more than one private partner (p.16)</li> <li>● one winner is the norm, but there are circumstances where more than one bidder can be selected (p.16)</li> <li>● while SMEs are unlikely to feature as consortium members in larger projects, they will have opportunities to participate at the subcontractor level (p.35)</li> </ul>	<p>48. It is normal to award a PPP contract to a single operator. The single operator may be a consortium made up of a number of companies and the consortium may sub-contract work. Nonetheless the single point of contact between the government and the consortium is a critical feature of successful partnership and implementation.</p> <p>49. For the WKCD, the Steering Committee reaffirmed at the outset that the WKCD project should be planned and executed as an integrated development. This approach enables more efficient planning and provision of infrastructure, internal transport services and facilities or structures extending over large areas of the site.</p>
<p><i>III. Benefits and risks</i></p>	
<ul style="list-style-type: none"> <li>● specify output/outcome-based performance specifications (p.20)</li> <li>● they allow the private sector as much flexibility as possible to produce innovative, cost-effective designs of services and infrastructure (p.20)</li> <li>● despite the desire to maximise flexibility, it is difficult to achieve 100% use of output specifications and it will usually be necessary to use some input-based specifications or even an outline design for reference or to ensure a specific need</li> </ul>	<p>50. In September 2003, the Government issued the IFP to invite development proposals from the private sector. The Government has received and is convinced by the opinion that in order to encourage and be able to respond appropriately to private sector innovation, maximum flexibility should be built in the IFP process. The requirements set out in the IFP are output-based without overly detailed terms or specifications. The proponents are also allowed to provide other facilities in addition to those required.</p>

<p>is met (p.20)</p> <ul style="list-style-type: none"> <li>● for some projects, the EoI and pre-qualification exercises may be conducted in one go, if it can save time and effort all round (p.16)</li> <li>● the number of bidders can be reduced to a manageable number through a pre-qualification process. Best practice suggests that a shortlist of three to four bidders is sufficient to create adequate competition and cover the risk of a party withdrawing, so long as there is adequate confidence in the capability and motivation of the bidders (p.16)</li> <li>● establish bid evaluation committee including the necessary departmental/technical/financial experts (p.65)</li> <li>● the PPP guide does not require involving the Independent Commission Against Corruption in the preparation of guidelines for the assessment process or as observer</li> <li>● conduct 2-envelope (technical and financial) evaluation (p.65)</li> </ul>	<p><u>Screening</u></p> <p>51. By the submission deadline on 19 June 2004, the Government has received five proposals. The assessment committee screened the proposals against the basic requirements laid down in the IFP. After approval by the Steering Committee and Executive Council, the screening result was announced in Legislative Council on 10 November 2004. Three proposals satisfied all the mandatory requirements and were screened in for further assessment in accordance with the IFP.</p> <p><u>Assessment</u></p> <p>52. The assessment is being undertaken strictly in accordance with the procedures set out in the IFP. The assessment criteria have been set out in the IFP to ensure fairness and enhance transparency. The Proposals Evaluation Committee set up for the purpose is chaired by Permanent Secretary for Housing, Planning and Lands (Planning and Lands), and comprises members of more than ten bureaux and professional departments. The Proposals Evaluation Committee has also engaged independent advisers to assist in the assessment of the technical, operation and financial aspects of the proposals. This assures that the assessment process, far from being controlled by one or two people, is a collective effort with adequate checks and balances.</p> <p>53. To ensure fairness and impartiality in assessing all the proposals, the Government took the extraordinary step of inviting the Independent Commission Against Corruption to help prepare stringent guidelines for the assessment process and to act as an observer throughout.</p> <p>54. To ensure a fair assessment and to enhance transparency, the detailed criteria on which the assessment is based were established before the IFP was issued. The assessment covers three aspects: technical; operation, maintenance and management; and financial. Each of the three aspects carries equal weight. In assessing the proposals, the Proposals</p>
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<ul style="list-style-type: none"> <li>● it is important to ensure that confidential information and intellectual property of private sector bidders is protected (p.53)</li>   <li>● negotiate with conforming bidders to achieve improvements to bids whilst under competitive pressure (p.14)</li> </ul>	<p>Evaluation Committee has made reference to Government’s estimates on the capital expenditure of the buildings and infrastructures as well as the revenue and operating expenditure of arts and cultural facilities, to assess the reasonableness of the assumptions adopted in the proposals.</p> <p>55. Under the IFP, the Government is obliged to protect the confidential information submitted by the proponents. In particular, the IFP stipulates that the Government will seek a proponent’s prior written agreement for exhibiting information designated as commercially sensitive.</p> <p><u>Next stage of the IFP</u></p> <p>56. As mentioned in paragraph 50, maximum flexibility is built in the current IFP process to facilitate private sector innovation and allow the Government to shape the WKCD to meet public need. In the next stage of the IFP, we envisage that we may, on the basis of the existing requirements, introduce new requirements or aspects for the shortlisted proponents to revise their proposals for further assessment. The assessment criteria for the revised proposals will be published to ensure fairness and enhance transparency of the process.</p> <p>57. In addition, given the scale and complexity of the project, the IFP has been so designed as to provide sufficient flexibility to allow the Government to negotiate with the proponents, in order that the Government can select a proposal that will best meet public aspirations and is in the best public interest. Detailed arrangements for the negotiation will be finalised at a later stage.</p>
<ul style="list-style-type: none"> <li>● assessment of required services/facilities by making reference to: <ul style="list-style-type: none"> <li>➤ Hong Kong Planning Standards and Guidelines</li> <li>➤ requests/proposals made by relevant</li> </ul> </li> </ul>	<p>58. Please refer to paragraphs 1 and 12.</p>



<ul style="list-style-type: none"> <li>➤ departments/organizations</li> <li>➤ popularity/utilization rates of other facilities providing similar services</li> <li>➤ surveys of potential users/service providers</li> <li>➤ relevant population forecasts (p.62)</li> </ul>	
<ul style="list-style-type: none"> <li>● contracts may contain defined inputs to protect Government interests in the event of disputes (p.20)</li> </ul>	<p>59. As mentioned in paragraph 50, maximum flexibility has been built in the IFP process to facilitate private sector innovation in a unique, large-scale and complex project like the WKCD. We are shaping the WKCD through the current IFP process, including the assessment of proposals and public consultation. The IFP has already set out a broad legal framework governing the rights and obligations of the selected proponent and Government. It allows detailed arrangements, including contract terms, land grant conditions, commercial arrangements, performance monitoring, etc. to be shaped and prescribed as the project evolves in the IFP process.</p>
<ul style="list-style-type: none"> <li>● assess all foreseeable risks and impacts; set out the risk matrix stipulating the appropriate parties responsible for managing and mitigating the risks (p.63)</li> <li>● generally the client department would be expected to bear any risk arising from variations required by the Government, or discriminatory or specific changes in the law. The private partner would be expected to carry all other risks including general business risks (p.22)</li> </ul>	<p>60. Through the IFP process, the Government seeks to achieve optimal risk allocation between the private sector and itself. Possessing market knowledge and expertise, the successful proponent will bear the risks associated with the property market, the construction and the operation of the WKCD. The IFP requires the Government to assess the risk management strategies of the proponents to ensure that the risks will be properly managed and mitigated. As the project evolves, there will be more mature risk assessment and requirements on the shortlisted proponents.</p>

<ul style="list-style-type: none"> <li>● proper drafting of contract/performance requirements and contract monitoring to guard against: <ul style="list-style-type: none"> <li>➤ loss of control;</li> <li>➤ increased costs;</li> <li>➤ inadequate accountability;</li> <li>➤ unreliable levels of service;</li> <li>➤ lack of competition;</li> <li>➤ bottom line considerations assuming disproportionate importance;</li> <li>➤ business culture co-existing uncomfortably with culture of service;</li> <li>➤ lack of flexibility, especially over the longer term;</li> <li>➤ disruption of service, and costs incurred by Government when step-in rights exercised;</li> <li>➤ inappropriate allocation of risks between Government and the private sector;</li> <li>➤ Government being “locked-in” for the life of the project with need to compensate the private partner if it wants to exercise a “break clause”;</li> <li>➤ the private sector escaping liability through liquidation and use of limited liability companies;</li> </ul> </li> </ul>	<p>61. Please refer to paragraph 59.</p>
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<ul style="list-style-type: none"> <li>➤ bias in the contracting process;</li> <li>➤ large buy-out payments by Government to replace a poor performing operator;</li> <li>➤ higher costs due to limited competition if suitably experienced/qualified PPP contractors are not available;</li> <li>➤ greater difficulty and higher cost in removing an unsatisfactory contractor;</li> <li>➤ higher financing costs; and</li> <li>➤ greater secrecy and lack of transparency resulting in benefits not being shared with Government. (p.21)</li> </ul>	
<p><i>IV. Financial issues</i></p>	
<ul style="list-style-type: none"> <li>● need to secure approval from the Public Works Subcommittee and the Finance Committee (FC) for the capital funding commitment, and FC's approval for the remaining long-term recurrent commitments for PPP projects that create long-term financial commitments for Government (p.26)</li> </ul>	<p>62. The WKCD project is financially freestanding. We do not expect any capital funding commitment or long-term recurrent commitments for the Government.</p>

<ul style="list-style-type: none"> <li>● determine detailed commercial arrangements for the following key issues: <ul style="list-style-type: none"> <li>➤ payment mechanism</li> <li>➤ contract duration</li> <li>➤ land grant conditions, land premium, revenue, profit sharing</li> </ul> </li> </ul>	<p>63. Please refer to paragraph 59.</p>
<p>V. <i>Public Sector Comparator (PSC)</i></p> <ul style="list-style-type: none"> <li>● where no public money is involved because the project is financially freestanding (i.e. the private partner recovers all costs through charges to the ultimate consumers), or where a firm decision has been made that the PPP approach is to be followed for policy or qualitative reasons, a PSC need not be constructed. (p.32)</li> </ul>	<p>64. In line with the PPP guide, the WKCD development process has been carefully crafted to suit the specific circumstances of this unique, large-scale and complex project. Maximum flexibility has been built in the IFP process so as to encourage innovation by the private sector and allow the Government to shape the WKCD in light of assessment findings and public views. The WKCD integrates commercial facilities which are not usually provided by the public sector. These have rendered the construction of any PSC impossible, and indeed irrelevant, at the beginning of the IFP.</p> <p>65. Nevertheless, the Government has made use of certain reference data for conducting feasibility studies before preparing the IFP and for assessing the cost and revenue assumptions adopted by the proposals. Such reference data will be revised, enriched and refined as the project evolves in the next stage of the IFP. It will be relevant to future negotiation. Hence any premature disclosure may weaken the Government's position in future negotiations with the proponents, making it impossible for the Government to secure a package that is in the best interest of the public. We are prepared to arrange for disclosure of such data before signing any provisional agreement with the successful proponent, subject to Government's negotiation position not being compromised.</p>

<ul style="list-style-type: none"> <li>● construct PSC with four core components: <ul style="list-style-type: none"> <li>➤ raw PSC;</li> <li>➤ competitive neutrality adjustment;</li> <li>➤ transferable risk; and</li> <li>➤ retained risk. (p.31)</li> </ul> </li> </ul>	<p>66. Please refer to paragraphs 64 and 65.</p>
<ul style="list-style-type: none"> <li>● review and refine PSC during course of procurement (p.63)</li> </ul>	<p>67. Please refer to paragraphs 64 and 65.</p>
<ul style="list-style-type: none"> <li>● final PSC to be made public by the time of the RFP (p.32)</li> </ul>	<p>68. Please refer to paragraphs 64 and 65.</p>
<ul style="list-style-type: none"> <li>● compare proposals with each other and with PSC (p.65)</li> </ul>	<p>69. Please refer to paragraphs 64 and 65.</p>
<ul style="list-style-type: none"> <li>● establish value for money, especially if public land has been provided at less than full market value, if no PSC is constructed (p.32)</li> </ul>	<p>70. Please refer to paragraphs 64 and 65.</p>
<ul style="list-style-type: none"> <li>● may revert to conventional approach if no PPP proposal is judged to provide value for money (p.32)</li> </ul>	<p>71. Please refer to paragraphs 64 and 65.</p>

<p>VI. <i>Land issues</i></p>	
<ul style="list-style-type: none"> <li>● land would normally have been earmarked for use on appropriate plan by the Planning Department and zoned as GIC (p.62)</li> </ul>	<p>72. The “GIC” zoning will be applicable if the development is intended for use directly related to or in support of the work of the Government, organisations providing social services to meet community needs, and other institutional establishment. Since the WKCD is an integrated development with arts, cultural, commercial and entertainment facilities, it is zoned as “Other Specified Uses” annotated “Arts, Cultural, Commercial and Entertainment” to clearly reflect the planning intention. The development of the site needs to comply with the provisions of the South West Kowloon Outline Zoning Plan (OZP) and the list of permissible uses as specified in the Notes of the Plan.</p>
<ul style="list-style-type: none"> <li>● land use in GIC zone is governed by the Town Planning Ordinance (p.62)</li>   <li>● the PPP guide does not require a two-stage approach for plan amendments</li> </ul>	<p>73. The land use of the “Other Specified Uses” is also governed by the Town Planning Ordinance.</p> <p>74. The WKCD development is under the close scrutiny of the TPB, which has been involved at various stages of the planning process and will continue to play a key role in the subsequent stages.</p> <p>75. A two-stage approach for the plan amendments of the OZP will be adopted to fit the special nature of the WKCD, which is currently in the shaping stage and will evolve in the IFP process. In the first stage, the WKCD was zoned “Other Specified Uses” on the OZP to reflect the planning intention of developing the site into an integrated arts and cultural district while allowing a sufficient degree of design flexibility for the proponents to come up with the most appropriate proposals commensurate with the development objectives.</p> <p>76. The TPB will be consulted for its views before the Government selects the preferred proposal. Development parameters of the preferred proposal, including plot ratio, gross floor area of buildings of different uses, maximum building height and open space, must be agreed by the TPB before the Government signs the provisional agreement with the</p>

	<p>successful proponent.</p> <p>77. In the second stage, the proposed development parameters will then be submitted to the TPB formally. The TPB will incorporate these development parameters (including plot ratio, gross floor area of buildings of different uses, maximum building height and open space) into the relevant draft OZP and gazette the plan pursuant to the Town Planning Ordinance for public inspection. Members of the public may comment on or raise objections to the draft plan. The TPB will consider and process all the views received in accordance with the normal statutory process.</p> <p>78. Finally, the TPB will submit the draft OZP to the Chief Executive in Council for approval. The successful proponent will not be allowed to make any changes to the development parameters without prior approval from the TPB and the Government. In which case, amendments to the OZP would be necessary and would need to go through the same plan exhibition process for public inspection and comment.</p> <p>79. The Government will seek the Executive Council's approval to sign a final project agreement with the successful proponent only after the required town planning and other statutory procedures have been fully completed. The whole development process of the WKCD project is carried out under the close scrutiny of the public and the TPB.</p>
<ul style="list-style-type: none"> <li>● land tenure and status by way of licence, short-term tenancy or lease (p.49)</li> </ul>	<p>80. Land administration matters are set out in the IFP. Basically, a short term tenancy (tenancies) will be granted to the successful proponent for the construction phase. Upon successful completion of the construction and other requirements, the short term tenancy (tenancies) will be replaced by a grant of a long lease. However, no final decision has been taken by the Government as to the nature of the interest or interests in land that may be granted to the successful proponent.</p>

<ul style="list-style-type: none"> <li>● private partner should not be allowed to sell, sublet or otherwise dispose of the land, or reduce its economic value without Government approval (p.51)</li> </ul>	<p>81. The IFP stipulates that Government approval will be required for the disposal of the land by the successful proponent.</p>
<ul style="list-style-type: none"> <li>● if PPP partner is allowed to provide revenue-generating services, how to ensure the public purse receives its fair share (p.52)</li> </ul>	<p>82. Safeguards will need to be introduced in the next stage of the IFP exercise to avoid profiteering by the successful proponent. These may include measures like: after evaluating the construction costs of the WKCD and operating expenses for 30 years, we could ask the proponent to set up a fund that would operate independently to enhance its support for the operation of arts and cultural facilities; we could ask the proponent to share its profits with the Government so that the Government could use the funds to support the development of the arts and culture or for other social uses; we could also ask the proponent to pay a one-off land premium sum, which would go into the public coffers. The details will be finalised at a later stage as we shape the WKCD in an evolutionary process permitted by the IFP.</p>