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Panel on Home Affairs and Panel on Development

Background brief prepared by the Legislative Council Secretariat for the joint meeting on 14 November 2008

Monitoring of the West Kowloon Cultural District Project

Purpose

This paper provides background information on the West Kowloon Cultural District (WKCD) project, and the monitoring of the project by Members of the Legislative Council (LegCo).

Background

2. The WKCD project is a major initiative by the Administration to implement its policy on arts and culture by meeting the long-term infrastructural and development needs of Hong Kong's arts and culture. The idea of developing the site of West Kowloon Reclamation into a world-class integrated arts, cultural and entertainment district was first mooted and discussed in the late 1990s. In September 2002, the Administration established the Steering Committee for Development of West Kowloon Cultural District to take forward the project.

3. In September 2003, the Administration launched an Invitation for Proposals (IFP) for developing WKCD and announced in November 2004 that three proposals met the basic requirements specified by IFP. Public consultation on the three screened-in proposals was launched from December 2004 to June 2005. The results, however, revealed that there was considerable resistance against the single development approach and the high density development put forward by the proponents. There was a general preference for a dedicated non-profit-making statutory body to oversee the project.

4. In response to public concern, the Administration introduced in October 2005 additional parameters and conditions to the development framework under the IFP. In February 2006, the Chief Secretary for Administration announced that the Government had decided to discontinue the IFP process, as none of the proponents had made any firm and clear commitment to pursuing the WKCD project under the modified IFP framework.

5. In April 2006, the Administration established the Consultative Committee on the Core Arts and Cultural Facilities of the West Kowloon Cultural District (Consultative Committee), supported by its three advisory groups to re-examine, with a view to re-confirming, if appropriate, the need for the Core Arts and Cultural Facilities (CACF) as defined in IFP and other arts and cultural facilities to be provided in WKCD, and the financial implications of developing and operating these facilities. The recommendation report of the Consultative Committee was submitted to the Chief Executive in June 2007 and was released by the Administration with the launch of a three-month public engagement exercise in September 2007.

6. Having regard to the results of the public engagement exercise, the Administration proposed to adopt the Consultative Committee's recommendations with regard to the provision of arts and cultural facilities in WKCD, the financing approach for developing the WKCD and the enactment of legislation for the establishment of a West Kowloon Cultural District Authority (WKCDA).

7. The WKCDA Bill was introduced into LegCo on 20 February 2008. The Bill proposed to set up WKCDA as a dedicated statutory body whose major functions are to implement the WKCD project from its planning to the operation stages and to ensure the project's financial sustainability. The Bill was passed by LegCo on 3 July 2008. The funding proposal to provide a one-off upfront endowment of \$21.6 billion (Net Present Value at 2008) to WKCDA to implement the WKCD project was approved by the Finance Committee on 4 July 2008.

Monitoring of the development of the WKCD project by LegCo

8. Since 1999, LegCo has been following up issues relating to the WKCD project in various forums, including at meetings of the former Panel on Planning, Lands and Works (now renamed as the Panel on Development) and the Panel on Home Affairs. On 21 January 2005, the Subcommittee on WKCD Development (the Subcommittee) was formed under the House Committee (HC) to follow up on a range of issues relating to the development of WKCD.

9. The Subcommittee identified in phase I of its study the problems of the development of WKCD and made recommendations on the way forward. It focused on the mode of planning, implementing, managing and financing for

WKCD using overseas projects of comparable scale as reference in phase II of its study. In phase III (i.e. the final phase) of its study, during which the Administration introduced the legislative proposal for setting up the WKCDA and the financial proposal to grant the Authority an upfront endowment, the main areas of study included, inter alia, the financial arrangements for WKCD, the statutory body to take forward the project, and parameters for future monitoring of the WKCD project. The Subcommittee submitted three reports on phases I, II and III of its study to HC on 6 July 2005, 6 January 2006 and 20 June 2008 respectively. Hon Alan LEONG, the Subcommittee Chairman, moved a motion at the Council meeting on 25 June 2008 on the Phase III Study Report of the Subcommittee. The motion was passed by the Council.

10. The Administration's legislative and financial proposals on the WKCD project were also intensively deliberated in other forums. A Bills Committee was formed on 22 February 2008 to scrutinize the WKCDA Bill. The funding proposal was considered at the meetings of the Public Works Subcommittee on 18 June 2008 and of the Finance Committee on 4 July 2008.

Major views and concerns on WKCDA

11. Major views and concerns expressed by members of various committees on WKCDA and the related financial arrangements are summarized in paragraphs 12 to 15.

Composition of the WKCDA Board and appointment mechanism

12. Members expressed concern on the Board's accountability and representativeness, given that all Board members (other than the Chief Executive Officer) are to be appointed by the Chief Executive. As for the Board Chairman, some members were concerned that the normal checks and balances on the powers of a statutory body would become ineffectual if WKCDA is to be headed by a very senior government official such as the Chief Secretary for Administration.

Public accountability and operational transparency of WKCDA

13. Since WKCDA would be conferred with very wide ranging power and would be vested with substantial public resources, in terms of land and monetary endowment, members found that the checks and balances and the accountability measures proposed in the Bill were inadequate to ensure that WKCDA would be subject to sufficient public scrutiny and monitoring by LegCo in its implementation of the WKCD project and deployment of funds. Members considered that a mechanism should be put in place to enable LegCo to effectively monitor the WKCD project so that problems could be identified and rectified at an early stage.

Financial arrangements

14. Members expressed concern about WKCDA's capability in managing the huge endowment fund and the extent of control which could be exercised by LegCo and the Administration over an independent statutory body to prevent abuse in spending. They considered that the Administration should put in place a proper oversight mechanism for the provision of adequate and timely information on the use of funds by WKCDA, so as to enable LegCo to exercise its constitutional duty to ensure the proper use of public resources. Some members found the 2% inflation rate adopted for the financial analysis in the Administration's financial assessment unrealistic and queried the financial viability and sustainability of the financial arrangement as forecasted by the Administration.

Planning and development of WKCD

15. Members urged the Administration to hold design competitions for the core facilities of the WKCD project, and to take forward the design and construction of the project separately. They also considered that public engagement work should be done in stages before and throughout the planning and development of WKCD, and suggested the establishment of statutory consultation panels to garner views from stakeholders and the general public in a structured manner and on an on-going basis.

16. In response to members' concerns, the Administration has provided in the WKCDA Ordinance (Cap. 601) a series of measures to enhance the accountability and transparency, corporate governance and financial management of WKCDA. These measures are summarized in paragraphs 17 to 19.

Accountability and transparency

17. WKCDA is required to set up a consultation panel to gather public views on matters relevant to the functions of the Authority and to consult the public in preparing the development plan for the whole WKCD. The development plan, which will lay out the various land uses in the WKCD, will have to be approved in accordance with the procedures set out under the Town Planning Ordinance (Cap. 131). In addition, multiple accountability and control provisions have also been provided in the WKCDA Ordinance to delineate clearly the division of responsibilities amongst different parties, viz. the governance structure of the WKCDA itself, the executive, the legislature and statutory public watchdogs.

Corporate governance

18. WKCD is required to set up an Audit Committee, an Investment Committee and a Remuneration Committee. The WKCD Ordinance contains elaborate provisions to guard against conflict of interest. WKCD is also required to submit its corporate plan and business plan to the Secretary for Home Affairs, as well as to keep proper accounts, to prepare an Annual Report, to invest, to borrow and to establish general and special reserve funds in accordance with the requirements of the Ordinance. Upon request of the LegCo, the Chairman and Chief Executive Officer of the WKCD have to attend meetings of the Council or of any LegCo committee to answer questions. In addition, the WKCD will be put under the remit of the Director of Audit, the Independent Commission Against Corruption, and the Ombudsman to safeguard public interests.

Financial management

19. WKCD is required to manage the upfront endowment (including the investment of funds) to ensure that there would be sufficient funds to cover the cash flow requirements of the capital costs of the WKCD project during the project period, and to ensure the financial sustainability of operating and managing the arts and cultural facilities and related facilities in the WKCD.

20. Regarding the planning and development of the WKCD project, the Administration has given an undertaking for design competitions to be held for several core facilities which would be iconic buildings in WKCD, and for WKCD to decide the procurement approach and arrangements for the WKCD project.

Parameters for future monitoring of the WKCD project

21. To provide reference for the Administration and the future WKCD when they discharge their respective roles and functions, and to facilitate further monitoring of the WKCD project by the relevant LegCo committees, the Subcommittee set out in Phase III of the Study Report some important parameters for the WKCD project. The key parameters, as suggested in the Report, are summarized in paragraphs 22 to 27.

WKCD

22. The Subcommittee considered that WKCD should aim to capitalize the opportunities offered by the WKCD project to catalyse the realization of a long-term arts and cultural vision for Hong Kong. There should be accountability, transparency and good governance in its operation. Adequate checks and balances and accountability measures should be put in place to ensure that WKCD would be subject to sufficient public scrutiny and monitoring by LegCo.

Planning and development of WKCD

23. The Subcommittee hoped that the Town Planning Board would give careful consideration and properly address the concerns expressed by a number of parties regarding the imposition of the building height restrictions, which might have adverse impacts on creative building designs and hindrance to the formulation of an optimal Development Plan at the subsequent stage of planning. The Subcommittee also urged WKCDA to conduct more extensive public engagement on planning parameters, designate more open space along the harbourfront for public enjoyment, make efforts to fully integrate WKCD with the neighbouring areas, in particular the old districts in the vicinity, and continue to engage Government planners to assist in the masterplanning of WKCD.

Core arts and cultural facilities

24. The Subcommittee considered that WKCDA should conduct more detailed studies on the proposed performance venues. International design competitions should be launched for iconic facilities, including M+, to obtain the best designs, while construction of these facilities should be pursued under separate design and construction contracts.

25. The Subcommittee supported the development of a flagship museum facility with a focus on the Hong Kong perspective. However, given that the international status of a museum could only be built up over time, it considered that M+ should proceed in a more cautious manner and where necessary, the Administration should consider downsizing M+ or further phasing out its implementation. To raise M+'s international status, in particular in the early years of its establishment, the Subcommittee suggested that consideration might be given to cooperation and partnership with overseas and Mainland institutions to operate M+. Markers for the planning and development of M+, including explaining to the general public in an easily comprehensible manner what M+ is meant to be, making the best use of interim M+ in North Point, building a competent curatorial and management team for M+, integrating Leisure and Cultural Services Department museum staff with M+ museum staff, were also suggested.

Financial arrangements

26. The Subcommittee noted the Administration's undertaking that it would be for WKCDA to find solutions to finance its works programmes should inflation rate exceed its present estimate. To monitor the financial position of M+, the Subcommittee urged WKCDA to report the planning and budgetary requirement for the interim M+ and the future M+ to the relevant committee of LegCo from time to time. On WKCDA staffing levels, the Subcommittee urged the Administration to ensure a clear delineation of responsibilities in the

future organizational structure, full justifications for the staffing requirement of WKCDA, as well as transparency and public accountability on the remuneration package to enable LegCo and the public to monitor the deployment of resources. Funding should also be set aside for long-term repair and maintenance programmes.

Public engagement

27. The Subcommittee advocated that future public engagement by WKCDA should strive to allow the public to participate right at the beginning and adopt a non-prescriptive, empowering and participatory approach. An institutionalized mechanism, with the provision of necessary resources, should be established to allow stakeholders and the general public to put forward their views in a structured and systematic manner.

Mechanisms for monitoring the WKCD project

28. A subcommittee was formed under HC on 21 January 2005 to follow up the WKCD project, which straddled the policy areas of culture and arts, planning and lands, environment and finance. Noting that the Rules of Procedure (RoP) of the Council at that time did not provide for the formation of a subcommittee under two or more Panels, members of HC agreed to invite the Committee on Rules of Procedure (CRoP) to study the matter. CRoP subsequently recommended amendments to RoP and House Rules (HR) to expressly provide for the formation of joint subcommittees under two or more Panels. CRoP's recommendation was endorsed by HC on 8 July 2005 and the Council on 19 October 2005. Accordingly, section 77(9A) of RoP and section 22(t) of HR now provide that two or more Panels may appoint joint subcommittees to study any matter of common interest to the relevant Panels and to report to the Panels.

29. On the other hand, HR 20(j)(ii) also provides for the formation of subcommittees under HC to study issues of public concern which fall outside the purview of Panels or any other matter relating to the business of the Council.

30. Irrespective of whether the subcommittee is appointed by Panels or HC, it will be necessary for the terms of reference of the subcommittee to be issue-specific or project-specific, and for the Panels or HC to have regard to the proposed terms of reference, time frame, work plan and extent of work involved in the study of the specific issue or project when considering the proposal for the appointment of a subcommittee. These requirements are set out in HR 22(u) and HR 20(k).

Latest development

31. On 23 October 2008, the Administration announced the appointment of the Chairman, three public officer members and 15 non-public officer members of the WKCDA Board. The Board, chaired by the Chief Secretary for Administration, held its first meeting on 28 October 2008.

32. A joint meeting of the Panel on Home Affairs and the Panel on Development will be held on 14 November 2008 to discuss the latest development of the WKCD project and consider the way forward in monitoring the project.

33. A list of relevant papers with their hyperlinks at the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
11 November 2008

Panel on Home Affairs

Relevant documents on monitoring of the West Kowloon Cultural District Project

Date of meeting	Meeting	Motion/Paper/Minutes	LC Paper No.
8.7.2005	House Committee	Subcommittee on West Kowloon Cultural District Development : Report of the Subcommittee on Phase I Study	http://www.legco.gov.hk/yr04-05/english/hc/sub_com/hs02/reports/hs02cb1-rpt-e.pdf
6.1.2006	House Committee	Subcommittee on West Kowloon Cultural District Development : Report of the Subcommittee on Phase II Study	http://www.legco.gov.hk/yr04-05/english/hc/sub_com/hs02/reports/hs02cb1-rpt2-e.pdf
31.1.2008	---	Legislative Council Brief on West Kowloon Cultural District : The way forward and West Kowloon Cultural District Authority Bill issued by the Home Affairs Bureau on 31 January 2008	SF(17) to HAB CS CR 7/1/27 http://www.legco.gov.hk/yr07-08/english/bills/brief/b23_brf.pdf
29.2.2008	Bills Committee on West Kowloon Cultural District Authority Bill	Background brief on West Kowloon Cultural District Authority Bill prepared by the Legislative Council Secretariat	CB(1)935/07-08(01) http://www.legco.gov.hk/yr07-08/english/bc/bc05/papers/bc050229cb1-935-1-e.pdf
18.6.2008	Public Works Subcommittee	Head 708 - Capital Subventions and Major Systems and Equipment 21QJ - An upfront endowment to the West Kowloon Cultural District Authority for developing the West Kowloon Cultural District	PWSC(2008-2009)31 http://www.legco.gov.hk/yr07-08/english/fc/pwsc/papers/p08-31e.pdf

Date of meeting	Meeting	Motion/Paper/Minutes	LC Paper No.
		Minutes of meeting	PWSC138/07-08 http://www.legco.gov.hk/yr07-08/english/fc/pwsc/minutes/pw080618.pdf
20.6.2008	House Committee	Subcommittee on West Kowloon Cultural District Development : Report of the Subcommittee on Phase III Study	http://www.legco.gov.hk/yr04-05/english/hc/sub_com/hs02/reports/hs02-rpt080620-e.pdf
25.6.2008	Council meeting	Hon Alan LEONG moved a motion on "Report of the Subcommittee on West Kowloon Cultural District Development". The motion was passed.	http://www.legco.gov.hk/yr07-08/english/legco_rpt/legco_motion06271-e.pdf
		Progress report provided by the Home Affairs Bureau in October 2008	http://www.legco.gov.hk/yr07-08/english/counmtg/motion/cm0625-m3-prpt-e.pdf
2.7.2008	Council meeting	Report of the Bills Committee on West Kowloon Cultural District Authority Bill	CB(1)2003/07-08 http://www.legco.gov.hk/yr07-08/english/bc/bc05/reports/bc05cb1-2003-e.pdf
4.7.2008	Finance Committee	Recommendations of the Public Works Subcommittee made on 4, 13, 18 and 20 June 2008	FCR(2008-2009)35 http://www.legco.gov.hk/yr07-08/english/fc/fc/papers/f08-35e.pdf
		Minutes of meeting	FC15/08-09 http://www.legco.gov.hk/yr07-08/english/fc/fc/minutes/fc080704.pdf

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