

立法會
Legislative Council

LC Paper No. CB (2)374/12-13
(These minutes have been seen by
the Administration)

Ref : CB2/SS/1/12

**Subcommittee on
Public Health and Municipal Services Ordinance (Public Pleasure
Grounds) (Amendment of Fourth Schedule) (No.2) Order 2012**

**Minutes of meeting
held on Monday, 29 October 2012, at 11:00 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Cyd HO Sau-lan (Chairman)
Hon James TO Kun-sun
Hon Alan LEONG Kah-kit, SC
Hon WU Chi-wai, MH
Hon SIN Chung-kai, SBS, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Public Officers attending : Item I
Home Affairs Bureau
Ms Elizabeth TAI
Principal Assistant Secretary for Home Affairs (West
Kowloon Cultural District)

Leisure and Cultural Services Department

Miss Margrit LI
Assistant Director (Leisure Services) 1

Mr Richard WONG
Chief Leisure Manager (Hong Kong West)

West Kowloon Cultural District Authority

Mr Michael Lynch
Chief Executive Officer

Dr CHAN Man-wai
Executive Director, Project Delivery

Ms Bonny WONG
Director, Chief Executive Officer's Office

Clerk in attendance : Ms Alice LEUNG
Chief Council Secretary (2) 2

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Miss Jasmine TAM
Council Secretary (2) 2

Miss Emma CHEUNG
Legislative Assistant (2) 2

Action

I. Meeting with the Administration

[File Ref: L/M(1) in LCS 19/HQ 813/00(18), L.N. 109 of 2012, LC Paper Nos. LS88/11-12, CB(2)69/12-13(02) & (03), CB(2)106/12-13(01)]

The Subcommittee deliberated (index of proceedings attached at **Annex**).

2. Members noted that the Administration and the West Kowloon Cultural District Authority ("WKCDA") had provided responses to members' concerns and requests raised at the last meeting [LC Paper No. CB(2)106/12-13(01)].

3. Noting that the West Kowloon Waterfront Promenade ("the Promenade") was handed over to WKCDA for use and management under a short term tenancy ("STT") entered into between the Lands Department and WKCDA, Mr James TO enquired whether WKCDA had the statutory authority to make bylaws for the management of STT sites. The legal adviser

Action

to the Subcommittee advised that by virtue of section 37(1) of the West Kowloon Cultural District Authority Ordinance (Cap. 601) ("WKCD Authority Ordinance"), WKCD was empowered to make bylaws for the regulation, operation or management of arts and cultural facilities, related facilities or ancillary activities; and for the conduct of all persons within any premises, buildings, structures, facilities or land which WKCD held or managed, whether within or outside the leased area.

4. Members noted the advice of the legal adviser to the Subcommittee that pursuant to section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1), where subsidiary legislation had been laid on the table of the Legislative Council ("LegCo"), LegCo might, by resolution passed at a LegCo sitting held not later than 28 days after the sitting at which it was so laid, provided that such subsidiary legislation should be amended in any manner whatsoever consistent with the power to make such subsidiary legislation, and if any resolution was so passed the subsidiary legislation should, without prejudice to anything done there under, be deemed to be amended as from the date of publication in the Gazette of such resolution. Therefore, the contracts signed between WKCD and the event organizers during the period when the Public Health and Municipal Services Ordinance (Public Pleasure Grounds) (Amendment of Fourth Schedule) (No.2) Order 2012 ("the Order") was in force should remain valid and binding.

5. On members' concerns about the temporary house rules adopted by WKCD for managing the Promenade and the relevant bylaws to be made by WKCD, the Administration and WKCD advised members that WKCD would prepare the relevant bylaws in accordance with section 37 of the WKCD Authority Ordinance in 2013 to cater for the opening of the early portion of the future park within 2014. The Administration and WKCD undertook to consult the Panel on Home Affairs or relevant subcommittee of LegCo before making any amendments to the aforesaid house rules and initiation of the legislative process of the bylaws.

6. Members deliberated on Mr James TO's suggestion made at the last meeting that the Subcommittee should consider whether there was a need to move a motion to repeal the Order. Having considered the explanations and the undertakings made by the Administration and WKCD, members agreed that the Subcommittee would not propose any amendment to the Order. Members noted that the Subcommittee had made a verbal report to the House Committee ("HC") on 26 October 2012 and would submit a written report to HC.

Action

Follow-up action

Clerk

7. The Chairman proposed and members agreed that the Secretary for Justice ("SJ") should be requested to provide his views and response to members' concerns over the arrangement whereby the Promenade, which had been subject to statutory regulation before the gazettal of the Order, was handed over to WKCDA for use and management with a set of temporary and administrative house rules with no legal basis.

(Post-meeting note: The reply from Senior Assistant Law Officer (Civil Law) of the Department of Justice on behalf of SJ was issued to members vide LC Paper No. CB(2)180/12-13(01) on 6 November 2012.)

II. Any other business

8. There being no other business, the meeting ended at 12:33 pm.

Council Business Division 2
Legislative Council Secretariat
17 December 2012

**Proceedings of meeting of
Subcommittee on Public Health and Municipal Services Ordinance
(Public Pleasure Grounds) (Amendment of Fourth Schedule) (No.2) Order 2012
held on Monday, 29 October 2012, at 11:00 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
000235 - 000410	Chairman	Opening remarks	
000411 - 001251	Chairman Admin	The Administration's briefing on its paper setting out its response to the issues raised by members at the meeting on 24 October 2012 (LC Paper No. CB(2)106/12-13(01)).	
001252 - 002847	Chairman Mr James TO Mr Christopher CHUNG Admin	On members' request for justifications for introducing an interim administrative arrangement for the West Kowloon Cultural District Authority ("WKCD") to manage the West Kowloon Waterfront Promenade ("the Promenade") with a set of temporary house rules with no legal basis, the Administration advised that WKCD planned to commence advance works at different parts of the West Kowloon Cultural District ("WKCD") site from early 2013 in order to meet the tight construction programme. As the Promenade would have to be closed to the public in phases from early 2013 for the relevant works, there was an imminent need for the Promenade to cease to be set aside as a public pleasure ground and for WKCD to assume the management of the Promenade. Given the short time span before the closure of the Promenade for advance works, it was considered more practical for WKCD to manage the Promenade by a set of temporary house rules. WKCD could exercise its rights as the lessee to manage the Promenade under the relevant short-term tenancy ("STT"), while the STT site was subject to other statutory regulations. In relation to the conduct of major public events, similar regulatory frameworks and modes of operation applied regardless of whether the Promenade was under the control of WKCD or if it was a public pleasure ground under the management and control of the Leisure and Cultural Services Department ("LCSO").	
002848 - 004349	Chairman Mr James TO Admin WKCD ALA7	Mr TO queried why the Administration did not vest the whole WKCD site in WKCD earlier, such that WKCD could formulate the relevant bylaws for the management of the site in its capacity as the land allocatee.	

Time marker	Speaker	Subject(s)	Action Required
		<p>WKCD A advised that it had yet to get a land grant in respect of the WKCD site. There was no requirement under the STT entered into between the Lands Department and WKCD A for WKCD A to establish bylaws for the STT sites in the short term. Members were assured that WKCD A would formulate the relevant bylaws in due course.</p> <p>Enquiry of Mr TO and advice of ALA7 on whether WKCD A had the statutory authority to make bylaws for the management of STT sites.</p> <p>On members' enquiry about whether the public events in WKCD could be held as planned if the Promenade was managed by LCSD under the Pleasure Grounds Regulation (Cap. 132BC) ("PGR"), the Administration advised that it usually took about two months for LCSD to process applications for non-designated uses of its leisure venues. In handling the applications, LCSD would need to consult relevant government departments to see if they had any objections on public safety and public order grounds. The activity organizers would also be required to obtain the necessary licences/permits from relevant departments for the activities concerned. Given the lead time required, LCSD would not be able to complete the processing of the venue applications in accordance with the implementation schedule of the planned events to be held in the Promenade.</p>	
004350 - 004616	Chairman Mr WU Chi-wai Mr Christopher CHUNG	<p>Mr WU reiterated his suggestion that consideration could be given to adopting the mode of management of Nan Lian Garden.</p> <p>Mr Chung considered that the Promenade should continue to be subject to statutory regulation even after it was handed over to WKCD A for use and management.</p>	
004617 - 005839	Chairman Mr Alan LEONG ALA7 Admin Mr Christopher CHUNG WKCD A	<p>Enquiry of Mr LEONG and advice of ALA7 on whether the Public Health and Municipal Services Ordinance (Public Pleasure Grounds) (Amendment of Fourth Schedule) (No.2) Order 2012 ("the Order") would remain in force until and unless it was repealed by a resolution passed at a Council meeting held on or before the expiry date of the scrutiny period of the Order (i.e. 7 November 2012).</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>The Administration's and WKCDA's response to the enquiry raised by members about the possible impact on the planned events to be held in WKCD if the Order was repealed and the Promenade was restored as a public pleasure ground under the management of LCSD.</p>	
005840 - 010922	<p>Chairman Mr Alan LEONG ALA7 Admin WKCDA</p>	<p>Enquiry of Mr LEONG and advice of ALA7 on whether the Order, if repealed, would have any effect on the contractual agreements entered into on or after 6 July 2012 (i.e. the date on which the Order came into operation) between WKCDA and the event organizers in respect of the use of the Promenade.</p> <p>The Administration's explanation on the non-applicability of the mode of management of Nan Lian Garden to WKCDA.</p> <p>In response to Mr LEONG's enquiry about the expected timing of closure of the Promenade for the construction works of the future park, the Administration and WKCDA advised that WKCDA planned to commence advance works from early 2013 for commissioning of the early portion of the park within 2014. Given the imminent need to commence advance works in the Promenade area, it would be necessary to re-trigger the process to remove the Promenade from the Fourth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132) very soon if it were restored as a public pleasure ground.</p>	
010923 - 011200	<p>Chairman Mr Christopher CHUNG Admin WKCDA</p>	<p>On Mr Chung's enquiry about whether WKCDA could expedite the formulation of the relevant bylaws, the Administration and WKCDA responded that WKCDA planned to draw up the relevant bylaws from a more holistic perspective during the park design process. Taking into consideration the target commissioning date of the early portion of the future park in late 2014, WKCDA would prepare the relevant bylaws in accordance with section 37 of WKCDA Ordinance in 2013 to cater for the opening of the future park.</p>	

Time marker	Speaker	Subject(s)	Action Required
011201 - 011959	Chairman Mr Alan LEONG Mr James TO Mr SIN Chung-kai	<p>Mr LEONG was of the view that having regard to the explanations made by the Administration and WKCD, it was not necessary for the Subcommittee to move a motion to repeal the Order. Mr TO concurred with Mr LEONG's view.</p> <p>Mr LEONG stressed that the Legislative Council ("LegCo") had all along attached great importance to the development of WKCD and WKCD should handle matters relating to the WKCD project with sensitivity and care for the due process of LegCo in scrutiny of legislative proposals.</p> <p>Members shared the view that the Administration/WKCD should consult the Panel on Home Affairs or relevant subcommittee of LegCo before making any amendments to the temporary house rules and initiation of the legislative process of the bylaws.</p>	<p>The undertaking of Admin/ WKCD (para. 4 of the minutes refers)</p>
012000 - 012644	Chairman Mr James TO Clerk Mr SIN Chung-kai Mr Alan LEONG	<p>Members agreed that -</p> <p>(a) the Subcommittee would not propose any amendment to the Order;</p> <p>(b) the Chairman would notify the House Committee that she would speak on behalf of the Subcommittee on the Order at the Council meeting of 7 November 2012; and</p> <p>(c) the Secretary for Justice should be requested to provide his views and response to members' concerns over the arrangement whereby the Promenade, which had been subject to statutory regulation before the gazettal of the Order, was handed over to the WKCD for use and management with a set of temporary and administrative house rules with no legal basis.</p>	<p>Clerk to follow up (para. 6 of the minutes refers)</p>
012645 - 013317	Chairman Mr WU Chi-wai Mr James TO WKCD Mr Alan LEONG	<p>Mr WU made comments on specific regulations in the West Kowloon Waterfront Promenade Regulations ("WKWPR") (e.g. items 9, 10 and 12 on "Vehicles", "Bicycles" and "Kites, model aircrafts, balloons etc." respectively) and WKCD responded to the comments.</p> <p>Members stressed that as a general principle, the rules and regulations adopted by WKCD for managing the Promenade should be less</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>restrictive than the relevant provisions in the PGR.</p> <p>Mr LEONG put on record that while the Subcommittee would not propose any amendment to the Order, the Subcommittee had not endorsed WKWPR and WKCDA should consult the relevant subcommittee of LegCo on the Regulations in due course.</p>	

Council Business Division 2
Legislative Council Secretariat
17 December 2012