

立法會 *Legislative Council*

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Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project

Meeting on 3 May 2021

Updated background brief on the development of M+

Purpose

This paper provides background information on the development of M+ and summarizes the major views and concerns expressed by members on relevant issues.

Background

2. Located at the western end of the West Kowloon Cultural District ("WKCD"), M+ is a museum dedicated to collecting, exhibiting and interpreting visual art, design and architecture, moving image and Hong Kong visual culture of the 20th and 21st centuries. Following an international competition, the Swiss architectural firm Herzog & de Meuron, in joint venture with Hong Kong-based TFP Farrells and Ove Arup & Partners Hong Kong, was selected in June 2013 to design and administer the M+ project.

3. With an area of 65 000 square metres, the M+ building houses 17 000 square metres of exhibition space across 33 galleries. It also has three cinemas, a Mediatheque, a Learning Hub, a Research Centre, museum shops, restaurants, a tea and coffee bar, a Members Lounge, office spaces and a roof garden.¹

¹ Source: [Press release](#) of WKCDA on 12 March 2021

Construction of M+

4. The M+ main works contract was awarded to Hsin Chong Construction Company Limited ("HCC") in September 2015 after a selective tendering process. The contract, valued at \$5.944 billion, included works on the M+ building, the Conservation and Storage Facility, a retail, dining and entertainment/other arts and cultural facilities building (P39B), an interfacing car park and some related public infrastructure works.

5. In July 2018, some media reports revealed that the West Kowloon Cultural District Authority ("WKCD") had paid the subcontractors of HCC directly in respect of the works for the M+ project since February 2017. On 17 August 2018, WKCD informed the Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project ("the Joint Subcommittee") that the employment of HCC under the M+ main works contract was terminated with effect from the same day.²

6. WKCD subsequently carried out a restricted tender and appointed Gammon Construction Limited ("GCL") as the new management contractor on 7 September 2018 to oversee the completion of the M+ project. The works at the M+ site resumed on 21 September 2018. According to WKCD,³ the outturn cost to complete the M+ project was anticipated to be higher than the original contract sum of \$5.944 billion largely because of the delays caused by HCC and its termination. Moreover, at the time of replacing HCC with GCL, there were many unresolved claims and variations between HCC and its subcontractors.⁴

7. The outbreak of the Coronavirus Disease—2019 ("COVID-19") pandemic has had an impact on the progress of the M+ project since early 2020. The M+ building eventually obtained OP on 24 December 2020 with the car park in the basement of M+ (which provides about 150 parking spaces) being the first facility to open to the public on 30 December 2020. The M+ museum is set to open to the public at the end of 2021.

² Please refer to the letter from WKCD on the M+ main works contract [[LC Paper No. CB\(1\)1333/17-18\(01\)](#)].

³ Source: [LC Paper No. CB\(1\)1128/18-19\(01\)](#)

⁴ In November 2019, WKCD indicated that as at the end of October 2019, it had issued over 200 novation agreements and deeds of transfers to existing subcontractors for the completion of the M+ project.

Governance structure of M+

8. A subsidiary company wholly-owned by WKCDA, namely M Plus Museum Limited ("M+ Ltd"), was incorporated in April 2016 with its own Board of Directors ("M+ Board") for formulating the vision and mission, as well as the strategies, policies and guidelines in relation to museological matters and professional standards of the museum's operations. In May 2016, the M+ Acquisitions Committee was established to review, approve and make recommendations to the M+ Board and the WKCDA Board on matters relating to acquisitions by M+.

9. In addition, a trustee company wholly-owned by WKCDA, namely M Plus Collections Limited ("M+ Collections Ltd"), was incorporated in August 2016 to serve as the trustee of the M+ Collections Trust to hold the legal interest in the M+ collections with a view to separating the legal and beneficial ownership of the collection and protecting it from possible inappropriate deaccession in the future. M+ Collections Ltd has engaged M+ Ltd to manage the M+ collections on a day-to-day basis while it provides an oversight of the M+ collections through an annual audit.⁵

Acquisition and management of M+ collections

10. M+'s strategies on acquisition and management of collections are set out in the M+ Acquisition Policy⁶ and M+ Ltd Collections Management Policy⁷ respectively. According to the M+ Acquisition Policy, M+ may acquire works by purchase, gift, bequest, exchange, transfer, licence, or commission, either from its own resources or from monies donated specifically for this purpose. A sum of \$1.7 billion has been allocated as "Collection and Collection related cost" in the financial plan of WKCDA for M+, of which \$973 million is specifically earmarked for initial acquisitions.

11. According to WKCDA, the M+ Acquisition Policy was developed based on the policies of major museums in the United States of America,

⁵ Source: [WKCDA's Annual Report 2016/2017](#)

⁶ Source: [M+ Acquisition Policy](#)

⁷ The main collection management activities covered by the M+ Ltd Collections Management Policy include acquisition/accessioning, deaccessioning/disposal, loans, objects placed in the custody of M+, conservation/care and maintenance of collections, risk management/insurance, documentation, collections records and inventories, access to collection and rights and reproductions. (Source: [M+ Ltd Collections Management Policy](#), paragraph 13)

Canada as well as Australia, and in consultation with the Independent Commission Against Corruption. The approving procedures and limits as laid down in the policy are more elaborate and rigorous than those of many major international museums. For instance, all acquisitions in many major international museums are made at the sole discretion of their respective Directors, whereas M+ needs to submit the proposals to the Board for approval before making major acquisitions. Besides, different acquisition approving authorities within WKCDA have members with strong arts/cultural background, and could seek the advice of independent experts when necessary. WKCDA will review the M+ Acquisition Policy at least once every two years so as to further improve the relevant policies and procedures. Approval from the Board would be required for any amendments to the Policy. The full M+ Acquisition Policy and its acquisition direction have been uploaded onto the official website for public inspection.⁸

Members' views and concerns

Cost, progress and monitoring of the M+ project

12. Members expressed grave concern about the repeated delays in the M+ project, and the impact of the termination of HCC's employment under the M+ main works contract and associated disputes on the development progress and project costs of M+.

13. WKCDA advised that the delay of the M+ project was due to a number of factors, including the termination of HCC's employment, complexity of the project and uncertainties during construction. The outbreak of COVID-19 had a further negative impact on the works progress. On the project costs of M+, WKCDA was still determining the full cost, including losses and damage to the Authority, of HCC's defaults and subsequent termination. While the final cost of the M+ project could only be determined after the expiry of the one-year defects liability period, which started following the practical completion of the project in around 2021, the additional costs expended since the termination of HCC's employment were in excess of \$400 million. As the joint provisional liquidators appointed to HCC had served a notice of dispute ("NoD") to WKCDA on 9 April 2019 followed by a further NoD on 6 September 2019 over the termination of the M+ main works contract with HCC, WKCDA was working its way through the contractual dispute resolution process, which involved assessment by an independent contract administrator, mediation and arbitration.

⁸ Source: [LC Paper No. CB\(2\)1446/12-13\(01\)](#)

14. Given the failure of HCC to make timely wage payments and WKCDA had made direct payments to the key subcontractors for months from February 2017, members were disappointed that WKCDA was acting in hindsight to terminate HCC's employment only in August 2018 and had misjudged the financial situation of HCC. They also questioned the effectiveness of the system put in place by WKCDA to monitor its contractors/subcontractors.

15. WKCDA responded that it was not until May 2018 when Hsin Chong Group Holdings Limited, HCC's parent company, made an announcement on the default on their US\$300 million 8.75% senior notes due 2018 that the insolvency of HCC was irrefutably clear. Due to HCC's deteriorating financial situation, in particular its cash flow, WKCDA decided to make direct payments to the key subcontractors from February 2017 to ensure that the works continued. Yet, as HCC was still unable to pay its subcontractors after WKCDA ceased the direct payment arrangement in July 2018 and failed to advance the project in line with the agreed timetable, WKCDA terminated the employment of HCC under the M+ main works contract on 17 August 2018.⁹ WKCDA also advised that a system of independent contract management had been put in place by WKCDA and functioning well in ensuring the funding requests submitted by main contractor based on the works carried out by the subcontractors were all checked and verified.

Acquisition and exhibition of artworks

16. Some members considered that WKCDA should be mindful of its role as a professional arts and cultural institution and urged WKCDA to exercise careful judgement in selecting the artworks to be acquired and displayed, and avoid cronyism during the process.

17. WKCDA advised that the M+ Acquisitions Committee had been set up to advise WKCDA on matters relating to acquisitions for the M+ collections and the M+ Acquisition Policy had been formulated. All proposed acquisitions (both purchases and donations) would be carefully reviewed in accordance with the strategy and acquisition criteria laid down under the M+ Acquisition Policy, and had to be approved by different tiers of authority according to the value of the artworks. To avoid any attempt of exerting undue influence on the acquisition decision, all WKCDA

⁹ A chronology of events leading to the decision of the WKCDA Board to terminate HCC's employment was submitted to the Joint Subcommittee ([Annex 1 to LC Paper No. CB\(1\)1376/17-18\(01\)](#)).

Board/Committee members were subject to the strict regulations against conflict of interest.

18. In response to members' concern about the arrangement adopted by WKCD in June 2012 for accepting and acquiring Dr Uli SIGG's collections,¹⁰ WKCD advised that the "part gift/part purchase" arrangement, which was intended as a sign of commitment to the donor, was not an uncommon model internationally for museums to obtain collections. Given the scale, completeness and importance of Dr SIGG's collections, WKCD considered it justifiable to accept the collections by way of such an arrangement, which had been approved by the WKCD Board. WKCD had also engaged Sotheby's, an international auction house, through established procurement procedures to value the Sigg Collection, with a view to obtaining professional opinion from a third party.

19. Members were concerned how WKCD would safeguard the independence of its curators and ensure that they would have the freedom to decide on the artworks to be acquired and displayed, and whether an artistic accountability system would be implemented in M+, under which curators would be accountable for their decisions on acquisitions and the arrangement of exhibitions. However, there was also a view that while respecting the freedom of expression, artworks which were indecent/obscene or contained political/insulting messages should not be regarded as art.

20. WKCD stressed that it fully appreciated that the independence and freedom of expression were vital to the success of any cultural institution, and all acquisitions would be considered in accordance with the guidelines and procedures as laid down in the M+ Acquisition Policy. A number of seasoned curators who were highly respected in the international museum field had been recruited for the operation of M+, and they would not risk jeopardizing their professional standing by being subject to any types of censorship or regulation in their ways of work.

21. Some members enquired about the themes of the Hong Kong works and items in the M+ collections, and whether the percentage of these artworks (about 20% to 28% of the M+ collections as advised by WKCD

¹⁰ In June 2012, WKCD decided to adopt the "part gift/part purchase" model in accepting a donation of 1 463 Chinese contemporary artworks, valued at around \$1.3 billion, from Dr SIGG of Switzerland and in acquiring from Dr SIGG 47 pieces of artworks for a sum of \$177 million. According to WKCD, the M+ Sigg Collection is universally recognized as the largest, most comprehensive and important collection in the world of Chinese contemporary art from the 1970s to the present. (Source: [WKCD's website](#))

in April 2020) could be further increased. WKCDA advised that M+ would contextualize Hong Kong creators in a global context, presenting their collections from a Hong Kong perspective with a global vision and the Hong Kong artworks would be put on an equal footing with the international artworks when displaying at M+. As the M+ acquisitions were based on the aesthetic value of the artworks and who could earn their place among the best in the world, M+ would not set a cap on the Hong Kong artworks to be acquired.

22. In response to members' enquiry about the curatorial programmes to be held at M+, WKCDA advised that the M+ collections would be presented at the exhibition area in M+ divided into 33 galleries. For example, the Main Hall Gallery would be set for a thematic exhibition on Hong Kong, called Hong Kong: Here and Beyond, whereas the East, South and North Galleries would be dedicated for showcasing collections relating to design and architecture, ink and visual art, and M+ Sigg Collection respectively. Meanwhile, collections like those from the "King of Kowloon" would be displayed at the open space of M+.

Governance of M+

23. Members were concerned whether the establishment of M+ Ltd would undermine the transparency of the operation and finances of M+ and its accountability to the Legislative Council ("LegCo"). Query had been raised as to whether the Administration and the WKCDA Board would be able to retain effective monitoring and control over the operation of M+, particularly in respect of control over assets and finances, under the new governance structure.

24. WKCDA explained that it was necessary for M+ to establish its own board to enable curatorial and museological decisions to be taken independently by museum professionals and board members with relevant experience and expertise. The new governance structure would help enhance public perception of the artistic freedom and curatorial independence of M+, strengthen the capacity of M+ to raise funds and solicit donations in artworks, and put M+ on a similar basis with other major contemporary arts museums around the world. The Administration and WKCDA assured members that while matters concerning curatorship, programming, collection and acquisition would be under the purview of the M+ Board, WKCDA would retain the overall monitoring and control over the finances of M+ Ltd. Funding allocation to M+ Ltd would continue to be managed centrally by WKCDA, and the business and corporate plans of M+ Ltd would be submitted to the WKCDA Board for approval after

endorsement by the M+ Board. The work of M+ Ltd would be subject to the monitoring of LegCo to ensure public accountability.

Recruitment and development of staff

25. Members considered that WKCDA should rely less on foreign experts and strive to recruit local art experts and museum professionals who were familiar with local arts and culture to support the development of M+. They also enquired about the estimated staff number of M+ as well as staff training and development for M+.

26. WKCDA advised that M+ would have about 250 staff members upon its full operation. While the Authority was always trying to recruit locally, there was a need to bring in expertise from overseas countries especially in the early stages of the development of M+ and for certain positions for which there was no formal training locally. WKCDA believed that this would not only fill the gaps in the skills required for the success of M+, but also facilitate the transfer of knowledge to local talents and help build up local expertise. The M+ team had launched extensive internship programmes and a docent volunteer programme as part of its commitment to nurture local talents by offering them unique learning opportunities in renowned international art exhibitions and broadening their curatorial knowledge base. Moreover, training programmes in cooperation with overseas tertiary institutions as well as on-the-job training for newly recruited staff would be provided in nurturing local talents for the museum profession in Hong Kong.

Recent developments

27. The collections of M+ have recently aroused public concern. Some of the M+ collections are alleged of being obscene or indecent, or containing political messages and might be in violation of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("the National Security Law"). There is a view that WKCDA should deaccession the relevant artworks from the M+ collections should they be in breach of the law.

28. In response to the above public concern, the Chairman of the WKCDA Board issued a statement in March 2021 stating that WKCDA will uphold the law and abide by the Basic Law, local laws and the National Security Law. When planning for M+'s opening at the end of

2021, the M+ curatorial team will strictly abide by the law and conduct the curatorial work in a professional, objective and balanced manner.¹¹

29. On 29 March 2021, the Joint Subcommittee conducted a visit to WKCD to better understand the latest development of the WKCD project. During the visit, participating Members were briefed, among others, the major facilities of M+ and the progress of the preparatory work in connection with its opening which is targeted for end 2021.

30. At the meeting to be held on 3 May 2021, the Administration and WKCDA will brief the Joint Subcommittee on the latest development of M+, including its opening arrangement.

Relevant papers

31. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
28 April 2021

¹¹ Sources: South China Morning Post (2021) *Chief of troubled arts hub vows it will uphold law*, 24 March and The Standard (2021) *Hub chief vows law 'will be followed'*, 24 March. (English version only)

Development of M+

List of relevant papers

Committee	Date of meeting	Paper
Former Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project formed in the Fifth Legislative Council	23.4.2013 Item II	Agenda Minutes Response of the Administration/WKCDA to members' concerns raised at the meeting
	10.6.2013 Item III	Agenda Minutes Response of the Administration/WKCDA to members' concerns raised at the meeting
	11.6.2013 (Issue date)	Letter dated 5.6.2013 from Hon Christopher CHUNG to the Clerk to Joint Subcommittee on issues relating to acquisition of artworks by M+ (Chinese version only)
	21.6.2013 (Issue date)	Response of WKCDA to the issues raised in the letter dated 5.6.2013 from Hon Christopher CHUNG
	29.11.2013 Item III	Agenda Minutes

Committee	Date of meeting	Paper
	26.2.2014 (Issue date)	Letter dated 25.2.2014 from Hon Christopher CHUNG to the Secretary for Home Affairs regarding the acquisition of "Kiyotomo Sushi Bar" (Chinese version only)
	19.3.2014 (Issue date)	Response of WKCDA to the issues raised in the letter dated 25.2.2014 from Hon Christopher CHUNG
	23.7.2014 Item I	Agenda Minutes Response of WKCDA to members' concerns raised at the meeting
	24.11.2014 Item II	Agenda Minutes
	19.5.2015 Item II	Agenda Minutes Response of the Administration/WKCDA to members' concerns raised at the meeting
	30.5.2016 Item II	Agenda Minutes
	21.6.2016 Item II	Agenda Minutes
Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project	20.12.2016 Item III	Agenda Minutes
	21.2.2017 Item III	Agenda Minutes

Committee	Date of meeting	Paper
	11.9.2018 Item I	Agenda Minutes Response of the Administration/WKCDA to members' concerns raised at the meeting
	6.11.2018 Item III	Agenda Minutes Response of WKCDA to members' concerns raised at the meeting
	10.6.2019 Item III	Agenda Minutes
	25.11.2019 Item IV	Agenda Minutes
	1.6.2020 Item IV	Agenda Minutes

Hyperlink to relevant Council question and the Administration's reply:

Date	Council question
6 February 2013	Question raised by Hon Christopher CHUNG on " Acquisition of Artworks by West Kowloon Cultural District Authority "