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6 November 2012

Ms Alice LEUNG  
Clerk to Subcommittee  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

Dear Ms LEUNG,

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

Thank you for your letter dated 1 November 2012 in which you have brought to Secretary for Justice (“SJ”)’s attention the concerns of the Subcommittee. I have been authorized by SJ to reply to the letter.

The Subcommittee would like to have our views on Members’ concerns over the arrangement whereby the West Kowloon Waterfront Promenade (“the Promenade”), which had been subject to the relevant subsidiary legislation (i.e. Pleasure Grounds Regulation made under the Public Health and Municipal Services Ordinance, Cap 132) before the gazettal of the captioned Order, was handed over to West Kowloon Cultural District Authority (“WKCD”) for use and management under a set of temporary, non-statutory or administrative rules.

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From the legal perspective, the Director of Leisure and Cultural Services ("DLCS") has the statutory power to decide whether and if so when to cease to set aside a particular public pleasure ground as a designated public pleasure ground under section 106 of Cap 132. In this connection, we are given to understand that the Promenade is required by WKCDA to facilitate preparation for advance works to meet the tight construction programme of the permanent facilities and the holding of large scale events before the Promenade is closed for construction. To enable the Administration to hand over the Promenade to the WKCDA for the aforementioned purposes, it would be lawful for the DLCS to make the Order in question.

We are further given to understand that the Promenade is covered by a Short Term Tenancy ("STT"). As the tenant under the STT, WKCDA in law has the right of possession of the Promenade, and is entitled to manage the Promenade in a way which is compatible with its legal right. Amongst others, WKCDA may: (1) fence off the Promenade; (2) give permission to any person to use or enter the Promenade; (3) evict or bring legal action against any trespassers; (4) make a civil claim against wrongdoers for property damage; or (5) lay down the terms and conditions which are required to be observed by any third parties entering or using the Promenade (such as in the form of administrative rules), and, if necessary, take legal action for breach of such terms and conditions.

In addition, legislative provisions such as the following are applicable to the Promenade and can be invoked where appropriate -

- (1) Various kinds of nuisances and obstructions committed in public places (sections 4, 4A, 27 and 28 of the Summary Offences Ordinance, Cap. 228);
- (2) Making of noises during certain times (sections 4 and 5 of the Noise Control Ordinance, Cap. 400);
- (3) Dumping of litter, spitting, etc. (sections 4 and 8A of the Public Cleansing and Prevention of Nuisances Regulation, Cap. 132BK).

While accepting that the legal status of the administrative rules made by the WKCDA (which has contractual force in law) is not the same as the Public Pleasure Grounds Regulation, Cap.132 BC (which is subsidiary legislation), we note that the former is modelled closely on the latter, and is, as we understand from HAB and WKCDA, intended to be a temporary measure only. In this regard, we understand that a set of statutory by-laws will be prepared by WKCDA in due course.

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I should be grateful if you would inform the Subcommittee of our views.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Emme Waller". The signature is fluid and cursive, with a large initial "E" and a trailing flourish.

( Emme Waller )  
Senior Assistant Law Officer (Civil Law)  
Civil Division