

立法會
Legislative Council

LC Paper No. CB(1)433/02-03
(These minutes have been seen
by the Administration)

Ref: CB1/BC/10/01

**Bills Committee on
Land (Miscellaneous Provisions) (Amendment) Bill 2002**

**Meeting on
Monday, 18 November 2002, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon LAU Ping-cheung (Chairman)
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Eric LI Ka-cheung, JP
Hon Miriam LAU Kin-ye, JP
Hon Emily LAU Wai-hing, JP
Hon Albert CHAN Wai-yip
Hon IP Kwok-him, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Fred LI Wah-ming, JP
Hon Margaret NG
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
- Public officers attending** : Environment, Transport and Works Bureau

Mr C S WAI
Principal Assistant Secretary for the Environment,
Transport and Works (Works)

Department of Justice

Ms Marie SIU
Senior Government Counsel
- Clerk in attendance** : Mr Andy LAU
Chief Assistant Secretary (1)2

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Ms Queenie YU
Senior Assistant Secretary (1)6

Action

I Meeting with the Administration

- | | |
|--|--|
| (LC Paper No. CB(1)283/02-03(01) | - Information paper provided by the Administration in response to issues raised at the meeting on 11.11.2002 |
| LC Paper No. CB(1)242/02-03(01) | - Information paper provided by the Administration in response to issues raised at the meeting on 24.10.2002 |
| LC Paper No. CB(1)283/02-03(02) | - Letter dated 4.11.2002 from Assistant Legal Adviser to the Administration |
| LC Paper No. CB(1)283/02-03(03) | - The Administration's reply dated 12.11.2002 to the Assistant Legal Adviser |
| LC Paper No. CB(1)85/02-03(01) | - Letter dated 18.9.2002 from Assistant Legal Adviser to the Administration |
| LC Paper No. CB(1)85/02-03(02) | - The Administration's reply dated 8.10.2002 to the Assistant Legal Adviser |
| LC Paper No. CB(3)541/01-02
Appendix III to LC Paper No.
CB(1)2164/01-02 | - The Bill
- Marked up copy of the Bill) |

2. The Bills Committee deliberated (index of proceedings attached at **Annex A**).

Admin 3. The Bills Committee requested the Administration to provide further information on the following to facilitate their consideration:

- (a) to advise on the availability of civil remedy to members of the public against an act or omission on the part of the Government in contravention of Part III of the Bill relating to excavation in unleased land;
- (b) to consider imposing a more stringent liability on the part of Government in case of contravention of Part III of the Bill, having regard to the proposed liabilities imposed on street excavation promoters and individuals under the Bill;
- (c) to clarify whether records of convictions of offences under the Bill would have to be disclosed when the convicted companies/persons bid for a Government contract or applying for a Government job vacancy

and the implications of these conviction records in such situations;

- (d) to consider introducing measures to facilitate individuals other than street excavation promoters to comply with the safety precaution and support requirements set out in the proposed new section 10Q(1);
- (e) to consider introducing an incentive scheme for street excavation promoters, say, for example, in case a street excavation promoter could arrange to re-open an excavation site for a certain period for temporary passage of vehicular traffic or pedestrian access, consideration could be given to extending the validity of the excavation permit for a corresponding period;
- (f) to advise on the factors to be taken into account in determining the initial permit period, and extension of permit; and
- (g) to advise on the monitoring mechanism of road excavations, the action plan to tackle the various problems of road excavations, and the extent to which the problems could be addressed by the Bill.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)415/02-03(01) on 3 December 2002.)

4. The Bills Committee noted the photograph presented by the Administration at the meeting which illustrated a congested trench at Tsun Yip Street, Kwun Tong.

(Post-meeting note: The photograph was circulated to members vide LC Paper No. CB(1)321/02-03 on 19 November 2002.)

Clerk 5. The Bills Committee noted that the Joint Utilities Policy Group would hold a meeting on 21 November 2002 to discuss, inter alia, the programme of the proposed site visit as agreed by members at the last meeting held on 11 November 2002. The Clerk was instructed to liaise further with the parties concerned with a view to finalizing a programme for members' consideration.

6. With regard to the keeping of criminal record for offences under the current Land (Miscellaneous Provisions) Ordinance (Cap. 28) (the Ordinance) and the Land (Miscellaneous Provisions) (Amendment) Bill 2002, the Bills Committee noted that it was still the practice of the Police to determine which convictions were to be recorded in the List of Recordable Offences for the purpose of issuance of Certificate of No Criminal Conviction. The List of Recordable Offences would be reviewed annually by the Police. The Principal Assistant Secretary for the Environment, Transport and Works (Works) (PAS for ETW) confirmed that the Administration had no intention to request the Police to record any offence committed under the Ordinance and the provisions of the Bill in the List of Recordable Offences. Hence, such offences would not be relevant for determining the issue of Certificate of No Criminal Conviction.

7. Notwithstanding the fact that offences under the Ordinance and the Bill would not be recorded by the Police in the List of Recordable Offences, members were concerned that under the existing administrative arrangement, there was no express statutory provision which prohibited the Police from doing so in future. PAS for ETW advised that the Administration confirmed that subject to that the offences and the penalties proposed in the Bill remained unchanged, convictions of such offences would not be recorded by the Police. On the need to include an express provision in the Bill for the purpose, he said that it was not necessary to add an express statutory provision in the Bill to prohibit the Director of Highways from requesting the Police to make a record of conviction under the Bill. In fact there was no similar express provision in any ordinance. The Bills Committee noted from the paper provided by the Administration for the Bills Committee's meeting on 11 November 2002 that it was a principle of legal policy that law should be coherent and self-consistent, the departure from the norm might require justification, but there was no such justification. It would be inconsistent with the overall scheme as no ordinance contained such a provision.

Clerk

8. Members considered it necessary to discuss further on the mechanism of the review of the List of Recordable Offences and disclosure of review of the List of Recordable Offences by the Police. However as the subject matters touched on a wider policy issue, the Bills Committee agreed that they should be referred to the Security Panel for follow-up.

ALA5

9. To facilitate members' consideration of the drafting of the new section 10Q, the Assistant Legal Adviser 5 said that she would prepare a paper to outline the respective liabilities of developers and contractors/sub-contractors in factories and industrial undertakings.

10. The Bills Committee agreed that the next meeting of the Bills Committee would be held on Monday, 9 December 2002, at 4:30 pm.

II Any other business

11. There being no other business, the meeting ended at 12:30 pm.

**Proceedings of the meeting of the Bills Committee on
Land (Miscellaneous Provisions) (Amendment) Bill 2002
Monday, 18 November 2002, at 10:45 am
in the Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
000000-000354	Chairman	Opening remarks	
000355-001515	Ms Miriam LAU Chairman Clerk Mr Albert CHAN Mr IP Kwok-him Ms Audrey EU Admin	- Objective and programme for the proposed visit to street excavation sites - Presentation of a photograph illustrating a congested trench in Kwun Tong	Clerk to take action as per paragraph 5
001516-001607	Admin Chairman Ms Miriam LAU	Introduction on Admin's paper [LC Paper No. CB(1) 283/02-03(01)]	
001608-003200	Admin Chairman	Introduction on Admin's paper [LC Paper No. CB(1) 242/02-03(01)]	
003201-004200	Ms Audrey EU Chairman Admin	- Drafting of the new section 2A(3) and 2A(4) - Enforcement of the environmental ordinances - Availability of civil remedy to members of the public against the Government under Part III of the Bill - Whether it was practical for members of the public to apply for judicial review	Admin to consider members' view
004201-005117	Ms Miriam LAU Admin Chairman Ms Audrey EU	- More stringent liability imposed on street excavation promoters and individuals than the Government under the Bill - Street excavation works undertaken by utility undertakers (UUs) and government departments - Provision of civil remedy relating to compensation in the Bill - Provision of civil remedy under the Land (Miscellaneous) Provisions Ordinance (Cap.28)	Admin to provide information as per paragraph 3(a) and 3(b)
005118-005750	Ms Audrey EU Chairman Admin Ms Emily LAU ALA5	- Policy on disclosure of conviction record for offences under the Bill - Express provision to reflect the Admin's intention that the Highways Department would not request the Police to record conviction of	

Time marker	Speaker	Subject(s)	Action required
		offence(s) under the Bill - Discussions by the former LegCo Panel on Security and Office of (the non-government) Members of the Executive and Legislative Councils (OMELCO) on the list of recordable offences	
005751-010846	Ms Emily LAU Chairman Admin ALA5 Ms Miriam LAU	- Conviction records for offences in the list of recordable offences - Changes to the list of recordable offences made by the Police and its impact on the policy on disclosure of conviction records for offences under the Bill and other ordinances - Referral of members' concern to the Panel on Security and report to the House Committee in the Bills Committee's Report - Implication on the convicted companies/persons in bidding for a Government contract or applying for a Government job vacancy - New provision in the Bill prohibiting the Director of Highways from requesting the police to make a record of conviction under the Bill	Admin to provide information as per paragraph 3(c) Clerk to refer the matter to the Panel on Security as per paragraph 8
010847-011731	Chairman Admin	Introduction on Admin's paper [LC Paper No. CB(1)283/02-03(01)]	
011732-012900	Ms Audrey EU ALA5 Admin Chairman Ms Emily LAU Ms Miriam LAU	- Improvement on the drafting of the new section 10Q with reference to the legal responsibility and liability of permittee under other ordinances comparable to the Bill - Measures to facilitate individuals other than street excavation promoters to comply with the safety precaution and support requirements under the new section 10Q(1) - Discharge of duties under the new section 10Q by the permittee and nominated permittee	Admin to provide information as per paragraph 3(d) ALA5 to provide information as per paragraph 9
012901-013500	Chairman Ms Emily LAU Admin	- Level of fines for undertaking street excavation works without a valid Excavation Permit (EP) - Number of EP-days and its impact on pedestrians and traffic - Target for improvement by UUs and the Government after enactment of the Bill	
013501-014006	Chairman Admin	- Incentives for street excavation promoters	Admin to provide information as per

Time marker	Speaker	Subject(s)	Action required
	Mr Albert CHAN	- Basis for determining EP duration and extension of permit - Control on street excavation works and inspection of work sites	paragraph 3(f) and 3(g)
014007-014212	Chairman Ms Miriam LAU Admin	Re-opening of excavation sites for temporary passage of vehicular traffic or pedestrian access and introduction of relevant incentive measures	Admin to provide information as per paragraph 3(e)
014213-014544	Chairman ALA5 Admin	- Questions raised by ALA5 vide LC Paper Nos. CB(1) 85/02-03(01) and (02) -Deemed issue or extension of secondary EP or secondary emergency EP under the new section 10E	
<i>Agenda Item II - Any other business</i>			
014545-014732	Chairman Mr Albert CHAN Ms Emily LAU Ms Miriam LAU	- Way forward - Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
 4 December 2002