

立法會
Legislative Council

LC Paper No. CB(1)2189/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/09/2

Bills Committee on Buildings (Amendment) Bill 2010

Sixteenth meeting on
Friday, 11 February 2011, at 3:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (Deputy Chairman)
Hon James TO Kun-sun
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon CHEUNG Hok-ming, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Dr Hon Priscilla LEUNG Mei-fun
Hon Tanya CHAN

Members absent : Dr Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Starry LEE Wai-king, JP

Public officers Attending : Mr Tommy YUEN Man-chung, JP
Deputy Secretary for Development (Planning and Lands) 2

Mr Edward TO Wing-hang
Principal Assistant Secretary for Development
(Planning and Lands) 3

Mr Daniel FONG Siu-wai
Assistant Secretary for Development (Buildings) 1

Mr LAM Siu-tong
Deputy Director of Buildings

Mr Alex CHOW Kim-ping
Assistant Director / Support
Buildings Department

Ms Rayne CHAI Chih-hui
Senior Government Counsel
Department of Justice

Mr Manuel NG Man-chun
Government Counsel
Department of Justice

Clerk in Attendance : Ms Annette LAM
Senior Council Secretary (1)3

Staff in Attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mr Daniel SIN
Senior Council Secretary (1)7

I Confirmation of minutes

(LC Paper No. CB(1)1268/10-11 -- Minutes of meeting on
23 December 2010)

The minutes of the meetings held on 23 December 2010 were confirmed.

II Meeting with the Administration

Proposed major Committee Stage amendments

(LC Paper No. CB(1)1266/10-11(01) -- Paper on proposed major Committee Stage amendments prepared by the Administration)

Discussion of outstanding issues

(LC Paper No. CB(1)1266/10-11(02) -- Administration's response to issues raised at the meeting on 23 December 2010, and 7 and 24 January 2011)

Other relevant papers previously issued

(LC Paper No. CB(3)389/09-10 -- The Bill

LC Paper No. CB(1)1168/09-10(01) -- Marked-up copy of the Bill prepared by the Legal Service Division

File Ref: DEVB(PL-CR) 2-15/08 -- Legislative Council Brief

LC Paper No. LS42/09-10 -- Legal Service Division Report

LC Paper No. CB(1)1168/09-10(02) -- Paper on Buildings (Amendment) Bill 2010 prepared by the Legislative Council Secretariat (Background brief)

LC Paper No. CB(1)993/10-11(02) -- List of follow-up actions arising from the discussion at the meeting on 23 December 2010

LC Paper No. CB(1)1935/09-10(01) -- List of follow-up actions arising from the discussion at the meeting on 6 May 2010)

2. The Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

3. The Administration was requested to provide the following information --
- (a) a response to members' suggestion of setting 20% as the maximum ceiling for the surcharge to be recovered from an owner who has failed to comply with a notice served under the proposed new sections 30B(3), (4), (5) or (6) or proposed new sections 30(3) or (4) of the Buildings Ordinance (Cap. 123) (BO), and for BA to exercise discretion to impose a lower surcharge or waive the surcharge if the owner has a reasonable excuse for failing to comply with BA's notice;
 - (b) the number and details of cases over the last five years where Buildings Department (BD) staff has entered and broke into premises to ascertain building safety;
 - (c) an assessment on the estimated number of cases that BA would need to apply to the Court for a warrant to enter private premises under the new clause 16A (that amends section 22 of BO); and
 - (d) a paper to explain how the Bill should be revised to make it clear that the proposal to require BD to apply for a warrant to enter any private premises for enforcement action would in effect narrow, rather than expand, BD's power under BO. The paper should also set out the emergency circumstances under which officers authorized by BA would enter a private premises without a warrant.

(Post-meeting note: The Administration's response was issued to members vide paper CB(1)1423/10-11(04) dated 28 February 2011)

II Any other business

4. There being no other business, the meeting ended at 5:30 pm.

Council Business Division 1
Legislative Council Secretariat
17 May 2011

Bills Committee on Buildings (Amendment) Bill 2010

Proceedings of the sixteenth meeting on Friday, 11 February 2011, at 3:30 pm in Conference Room A of the Legislative Council Building

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000550	Chairman	Opening remarks and confirmation of minutes (LC Paper No. CB(1)1268/10-11)	
000551 – 000753	Mr KAM Nai-wai Chairman	Mr KAM and the Chairman's comments that the Administration should request to reschedule the Bills Committee meeting if discussion papers were not ready.	
000754 – 000932	Administration	Briefing by the Administration (LC Paper No. CB(1)1266/10-11(01))	
000933 – 001829	Ms Cyd HO	Ms HO said discussion papers should reach members at least two working days before a meeting.	
001830 – 001903	Mr WONG Kwok-hing Chairman Administration	Mr WONG and the Chairman's suggestion for the Administration to brief members on all the provisions first before discussing individual proposals.	
001904 – 001958	Ms Cyd HO	Ms HO's suggestion of requesting the Administration to explain which provisions were introduced in response to members' views.	
001959 – 002404	Mr KAM Nai-wai Chairman Administration	(a) Mr KAM's query about whether or not public consultation would be conducted on the proposed new amendments. (b) Mr KAM's suggestions that the Administration should explain the general concepts of the new proposals before going into the detailed	

Time Marker	Speaker	Subject(s)	Action Required
		provisions.	
002405 – 003806	Administration	<p>The Administration's explanation that:</p> <ul style="list-style-type: none">(a) the additional amendments proposed for the Buildings (Amendment) Bill 2010 aimed to enhance building safety, and the proposals were discussed and agreed in principle by the Subcommittee on Building Safety and Related Issues;(b) a 20% surcharge would be imposed on all works (not just for the Mandatory Building Inspection Scheme (MBIS) or Mandatory Window Inspection Scheme (MWIS)) that were carried out by the Buildings Department (BD) under the Buildings Ordinance (BO) (Cap. 123) in owners' default;(c) the proposed amendment would make owners who refused to contribute towards the costs of all works required by statutory orders and notices in respect of common parts that were undertaken by owners' corporations (OCs) liable to an offence. The proposed amendment would also remove the penalty of imprisonment under the offence concerned, and would, instead, increase the level of fines from Level 3 (i.e. \$10,000) to Level 4 (i.e. \$25,000);(d) the proposed amendment would provide for the Building Authority (BA) or an authorized officer to apply to the Court for a warrant for entering and, if necessary, breaking into a private premises for law enforcement;(e) on top of the minor works control	

Time Marker	Speaker	Subject(s)	Action Required
		<p>system which allowed new signboards (up to a certain dimension) to be erected by registered minor works contractors without prior approval of BA, a signboard control system was proposed so that BD would not require demolition of certain existing unauthorized signboards (within stipulated dimensional requirements) after safety validation by registered building professionals or registered contractors; and</p> <p>(f) Registered Inspectors (RIs) would be required to report to BA any unauthorized building works (UBWs) on roofs, podiums, yards and lanes that were not in the common parts of the buildings.</p>	
003807 – 004348	Mr WONG Kwok-hing Administatration Chairman	<p><u>Surcharge for defaulted works</u></p> <p>(a) Mr WONG's suggestion that an owner should not be required to pay the 20% surcharge if he had a reasonable excuse for failing to comply with BA's order.</p> <p>(b) The Administration's response that BA had discretion under the Bill whether or not to levy the surcharge. A surcharge would normally be imposed if the owners wilfully refused to comply with BA's order despite repeated reminders.</p>	
004349 – 004557	Mr Abraham SHEK Administration	<p>(a) Mr SHEK's suggestion that the Bill should specify the circumstances for imposing the surcharge.</p> <p>(b) The Administration's response that BA's discretion would be subject to appeal, and BA must be reasonable when exercising discretionary power</p>	

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		under different circumstances.	
004558 – 005658	Mr KAM Nai-wai Administration Chairman	<p>(a) Mr KAM's enquiry about the provisions which provided for BA's discretion in imposing the surcharge, and recovering supervision charge from owners for works carried out on their behalf.</p> <p>(b) The Administration's explanation that the proposed amendment to section 33(1) of BO provided that "BA <i>may</i> impose a surcharge", and that section 33(2)(b) provided for the "supervision charge". The level of supervision charge depended on the actual cost payable by BD to the consultant engaged for the default works.</p> <p>(c) Mr KAM's query about how the discretionary power would be exercised.</p> <p>(d) The Administration's response that BA could waive the surcharge if owners could demonstrate due diligence to comply with BA's order even though the efforts eventually fell through.</p>	
005659 – 005915	Mr Abraham SHEK Administration Chairman	<p>(a) Mr SHEK's suggestion of capping the surcharge at 20%.</p> <p>(b) The Chairman asked the Administration to provide a response to members' suggestion of capping the surcharge at 20%, and for BA to impose a lower surcharge or waive the surcharge if the owner had a reasonable excuse for failing to comply with BA's notice.</p>	Administration to take action as required in paragraph 3 of the minutes
005916 –	Chairman	<u>Penalty for refusing to share cost of works</u>	

Time Marker	Speaker	Subject(s)	Action Required
005948	Mr Abraham SHEK Ms Cyd HO	Ms Cyd HO's comments that the Administration's proposal was in agreement with the Bills Committee's suggestion.	
005949 – 011739	Mr Abraham SHEK Chairman Deputy Chairman Administration	<p><u>Warrants for entry into interiors of individual premises</u></p> <p>(a) Mr SHEK's comments that BD's power under the proposed amendment to enter or break into any premises was too wide, and might infringe on private property rights.</p> <p>(b) The Administration's explanation that :-</p> <p>(i) the proposed amendment to section 22(1) of BO and the proposed new section 22(1B), which included conditions to be satisfied before entering into a private premises, would impose further checks and balances on BA's existing power.</p> <p>(ii) BA would only apply to the Court for a warrant to enter into a private premises after it had made several unsuccessful attempts to gain access to the private premises.</p> <p>(c) The Deputy Chairman's view that the proposed power was unjustified and would infringe upon private property rights, and that further public consultation should be conducted.</p> <p>(d) The Administration's response that section 22 of BO currently empowered officers of BD to enter into any individual premises and, in the presence of a public officer, break</p>	

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		<p>into such premises for specified purposes including to ascertain their safety. The power was, however, seldom exercised. The Administration considered it appropriate to impose checks and balances so that the power to break into a private premises could only be exercised in emergency situations, and in other circumstances, with a Court warrant.</p> <p>(e) The Chairman's view that the Administration's proposal would help solve the difficulties in gaining access for inspection encountered by BD's staff in dealing with the problem of unauthorized building works relating to sub-divided units.</p>	
011740 – 012302	Mr KAM Nai-wai Administration	<p>(a) Mr KAM's enquiry about the number of cases where BD staff entered into a private premises for inspection in the past, and whether the number of cases would increase if the proposed amendments were enacted.</p> <p>(b) Mr KAM observed that the proposed new section 22(1B)(a) allowed BA to apply for a Court warrant when refusal of admission to a private premises was apprehended. He considered the power too wide.</p> <p>(c) The Administration's explanation that the power would be exercised carefully in practice, taking into account established modus operandi of other departments in exercising similar power and subject to gate-keeping by the Magistrates' Courts in considering applications for warrants.</p> <p>(d) The Chairman requested the</p>	Administration

Time Marker	Speaker	Subject(s)	Action Required
		<p>Administration to provide:</p> <ul style="list-style-type: none"> (i) information on the number and details of cases over the last five years where BD staff had entered or broken into premises to ascertain building safety; and (ii) an assessment on the estimated number of cases that BA would need to apply to the Court for a warrant to enter private premises under the new clause 16A (that amends section 22 of BO). 	<p>to take action as required in paragraph 3 of the minutes</p>
<p>012303 – 012818</p>	<p>Miss Tanya CHAN Administration</p>	<ul style="list-style-type: none"> (a) Ms CHAN's concern over the standard of proof required under the proposed new section 22(1B) to satisfy the Court in order to obtain a warrant to enter into a private premises. She suggested that the Administration should remove the provision that allowed BA to apply for a warrant on ground that refusal to admission to a private premises was apprehended. (b) The Administration's explanation that the objective of the proposed amendment was to impose further checks and balances on BD's power of entry into private premises. The Administration would reconsider the wordings to better reflect the legislative intent in the current proposed amendments. (c) Ms CHAN's query about BA or an authorized officer's power to take samples under section 22(2)(b). (d) The Administration's response that it would be necessary to give BD staff the power to obtain samples during an in-depth inspection for subsequent 	

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		follow up or law enforcement purposes.	
012819 – 013340	Ms Cyd HO Administration Chairman	<p>(a) Ms HO's suggestion of removing the provision for BA to break into a private premises and that a warrant from the Magistrates' Courts should be required under all circumstances.</p> <p>(b) The Administration's explanation that the provision to enter into a private premises under emergency situations was justified, for example, when BA would need to ascertain the safety of a building after a fire, and when, for safety reasons, the owners could not be located or accompany the inspecting officers to the premises.</p>	
013341 – 014242	Prof Patrick LAU Administration Chairman	<p>(a) Prof LAU's comments that the Subcommittee on Building Safety and Related Issues supported the Administration's proposal to take the opportunity of the Buildings (Amendment) Bill 2010 to introduce additional provisions that could enhance building safety.</p> <p>(b) Prof LAU's query about whether the proposed amendment empowering BA to enter into a private premises to deal with UBWs or sub-division of flats was related to building safety and within the scope of the Bill. He suggested that the provision should be introduced in a separate Bill, following a proper public consultation.</p> <p>(c) The Administration's explanation that the proposed amendment was to provide for BA or an authorized officer to apply for a Court warrant to enter into a private premises to</p>	

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		<p>ascertain whether any building works had affected building safety.</p> <p>(d) The Chairman supplemented that the Bills Committee had, on a number of occasions, discussed the impact of UBWs and sub-division of flats on building safety, and agreed that a mechanism should be set up for RIs to report such works to BA for follow-up.</p>	
014243 – 014610	Mr Abraham SHEK Administration Chairman	<p>(a) Mr SHEK's view that the proposed amendments would expand, rather than restrict, the Administration's power to enter into a private premises and was unacceptable.</p> <p>(b) The Administration's response that the intention of the proposed amendment was primarily to safeguard building safety. The Administration would review the wordings of the provisions to make the intention clear.</p>	
014611 – 015130	Ms Cyd HO Administration Mr Abraham SHEK Chairman	<p>(a) Ms HO's suggestion that tighter grounds should be required for application for a Court warrant.</p> <p>(b) Mr SHEK's concern about possible abuse of power that might infringe upon private property rights.</p> <p>(c) Ms HO's query about whether the inspections or repair works under MWIS or MBIS were also considered as "any work" in section 22(1)(d) that BA could break into any premises to carry out.</p>	
015131 – 015634	Deputy Chairman Administration	The Deputy Chairman's comments that the wordings used in the proposed draft amendments were loose and rather	

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		subjective. The amendments, if enacted, would cause considerable interference to property owners or tenants. More public consultation was needed. He suggested that the proposed new amendment should be removed from the Bill and introduced separately.	
015635 – 015855	Miss Tanya CHAN Administration	<p>(a) Miss CHAN's request that the Administration should consider further tightening the grounds for applying for Court warrants to enter into a private premises in non-emergency situations.</p> <p>(b) The Chairman asked the Administration to provide a paper to explain how the Bill should be revised to make it clear that the proposal to require BD to apply for a warrant to enter into any private premises for enforcement action would in effect narrow, rather than expand, BA's power under BO. The paper should also set out under what emergency circumstances would officers authorized by BA enter into a private premises without a warrant.</p>	Administration to take action as required in paragraph 3 of the minutes
015856 – 015952	Chairman	Conclusion	
015953 – 020036	Chairman Administration	The next meeting would be held on 1 March 2011.	