

立法會
Legislative Council

LC Paper No. CB(1)2395/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/09/2

Bills Committee on Buildings (Amendment) Bill 2010

Twentieth meeting on
Wednesday, 20 April 2011, at 10:45 am
in Conference Room A of the Legislative Council Building

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Dr Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, 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
Hon Starry LEE Wai-king, JP
Hon Tanya CHAN

Members absent : 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
Dr Hon Priscilla LEUNG Mei-fun

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

Mr Manuel NG Man-chun
Government Counsel
Department of Justice

Clerk in Attendance : Ms Annette LAM
Chief Council Secretary (1)7

Staff in Attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mr Daniel SIN
Senior Council Secretary (1)7

Action

I Meeting with the Administration

Discussion of outstanding issues

(LC Paper No. CB(1)1706/10-11(04) -- Administration's response to issues raised at the meetings on 11 February and 16 March 2011

LC Paper No. CB(1)1896/10-11(01) -- List of follow-up actions arising from the discussion at the meeting on 28 March 2011

LC Paper No. CB(1)1896/10-11(02) -- Administration's response to issues raised at the meetings on 11 February, 16 and 28 March 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)1423/10-11(01) -- Updated paper on proposed major Committee Stage amendments prepared by the Administration

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

LC Paper No. CB(1)1423/10-11(03) -- List of follow-up actions arising from the discussion at the meeting on 11 February 2011

LC Paper No. CB(1)1706/10-11(03) -- List of follow-up actions arising from the discussion at the meeting on 16 March 2011

LC Paper No. CB(1)1878/10-11(01) -- Administration's response dated 11 April 2011 to the submission on the Buildings (Amendment) Bill 2010 from a member of the public)

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

Follow-up actions to be taken by the Administration

- Admin 2. The Administration was requested to provide a paper to address members' concern on whether the proposed committee stage amendments (CSAs) to the Buildings (Amendment) Bill 2010 in respect of the surcharge for defaulted works; penalty for refusing to share cost of works; warrants for entry to individual premises and the control of signboards were within the scope of the Buildings (Amendment) Bill 2010 to make provision for regular inspections of buildings and the associated repairs to prevent the buildings from becoming unsafe.
- ALA7 3. The Legal Adviser to the Bills Committee was requested to provide legal advice on the CSAs proposed by the Administration.

II Any other business

4. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
23 July 2012

Bills Committee on Buildings (Amendment) Bill 2010

**Proceedings of the Twentieth meeting
on Wednesday, 20 April 2011, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000342 – 000614	Chairman	Opening remarks	
000615 – 002328	Administration Chairman	The Administration's briefing on its paper (LC Paper No. CB(1)1896/10-11(02)).	
002329 – 002730	Mr WONG Kwok-hing Administration Chairman	(a) Mr WONG supported the Administration's warrant proposal and queried the need for a separate legislation to effect the changes. (b) The Administration's response that the proposed alternative of a separate legislative exercise, as and when necessary, would enable members to have more detailed discussion on this subject, and avoid holding up the implementation of the Mandatory Building Inspection Scheme (MBIS) and the Mandatory Window Inspection Scheme (MWIS).	
002731 – 003811	Prof Patrick LAU Administration Chairman	(a) Prof LAU's concern that the warrant proposal would allow staff of the Building Authority (BA) to enter into premises to carry out actions that might not be related to building safety. It would also be difficult for the staff to determine when to recommend to BA to apply for a warrant to enter into private premises. (b) The Administration's explanation that the warrant proposal aimed to address building safety issues arising from sub-divided units and to facilitate the enforcement of the MBIS / MWIS especially when BA had exhausted means to seek the owner's co-operation to enter into the premises.	

Time Marker	Speaker	Subject(s)	Action Required
		(c) Prof LAU's comments that the Administration should make this point clear in the drafting of the statutory provisions.	
003812 – 004029	Mr LEE Wing-tat	Mr LEE said Members belonging to the Democratic Party (DP) supported the warrant proposal as a last resort when there was prima facie evidence of safety problems and that all other attempts of seeking entry had failed.	
004030 – 004813	Ms Audrey EU Administration Chairman	<p>(a) Ms EU's concern whether the proposed CSAs were related to building safety and within the scope and coverage of the Amendment Bill, and that there was no prior public consultation on the proposal.</p> <p>(b) The Administration's explanation that the proposed CSAs were within the scope and consistent with the objective of the Amendment Bill which was to introduce measures to tackle the building safety problem through regular inspection and associated repair.</p>	
004814 – 005730	Dr Margaret NG Administration Chairman	<p>(a) Dr NG's comments that the new provisions empowering BA to enter into private premises to investigate sub-divided units would fall outside the scope of the Amendment Bill.</p> <p>(b) The Administration's response that the warrant proposal was not an expansion of power of BA. The proposal was to facilitate the Buildings Department's (BD) enforcement actions, in particular, actions against non-compliance of MBIS / MWIS notices and unauthorized building works associated with sub-divided units which very often could lead to building safety problems.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		(c) The Chairman's explanation that the proposal was introduced in response to members' previous comments. Members could decide by vote whether these provisions should be incorporated into the Amendment Bill.	
005731 – 010417	Mr Abraham SHEK Administration	(a) Mr SHEK's comments that the proposal deviated from the original legislative intent. The proposal which empowered BA's staff to enter into private premises might infringe the Basic Law which protected private property rights of individual owners. (b) The Administration's view that the proposal was related to building safety. The proposal was introduced in response to some members' earlier request for incorporating the provisions in the current exercise.	
010418 – 010817	Ms Cyd HO Chairman Administration	(a) Ms HO's comments that sub-divided units might affect building safety. While it would be useful to give the BA the power to enter into private premises to conduct inspection, the necessary legislative procedures should be followed. (b) Ms HO's suggestion that the Administration should withdraw the warrant proposal from the Amendment Bill and introduce the proposal in a separate Bill after due consultation. (c) The Administration's response that the proposed amendments were within the scope of the long title of the Amendment Bill.	
010818 – 011542	Ms Audrey EU Chairman	(a) Ms EU's comments that the Amendment Bill, which implemented	

Time Marker	Speaker	Subject(s)	Action Required
	Administration	<p>MBIS / MWIS, should only apply to buildings that exceeded 30 years of age, whereas the proposal would provide for BA's staff to apply for a warrant from the court to enter into any premises. Such provisions were therefore wider than the coverage of the Amendment Bill.</p> <p>(b) The Administration reiterated that the proposals were related to MBIS / MWIS as they would facilitate BA's staff to follow up on reports of Registered Inspectors (RIs).</p>	
011543 – 012045	Dr Margaret NG Chairman	Dr NG's view that all proposed amendments must be within the scope of the Amendment Bill.	
012046 – 012455	Prof Patrick LAU Administration	<p>(a) Prof LAU shared the views of Ms EU and Dr NG that the proposals did not fall within the scope of the Amendment Bill. He said that the proposal had not been fully discussed at the Panel on Development and the Subcommittee on Building Safety and Related Issues.</p> <p>(b) The Administration reiterated that the proposed provisions were introduced in response to members' views during the previous meetings and were closely related to building safety issues.</p>	
012456 – 012947	Mr LEE Wing-tat ALA7	(a) Mr LEE's comments that DP supported the Administration's proposal not because it agreed to give the Administration unfettered power to enter into private premises. DP would not support the proposals if the Legal Adviser advised that the provisions were beyond the scope of the Amendment Bill.	

Time Marker	Speaker	Subject(s)	Action Required
		(b) ALA7's response that it was the President of the Legislative Council who would decide whether any amendment was within the scope of the Amendment Bill.	
012948 – 013411	Ms Miriam LAU	Ms LAU's comment that the Administration should have a clear position on whether to proceed with the proposed provisions.	
013412 – 014325	Mr KAM Nai-wai Administration Chairman	<p>(a) Mr KAM's queries on whether :</p> <ul style="list-style-type: none"> (i) the proposed provisions for BA's staff to apply for a court warrant to enter into private premises would restrict BA's existing power or make his power more specific; (ii) the proposed provisions would widen the scope of the Amendment Bill beyond MBIS / MWIS matters; (iii) the Administration would consider conducting further consultation on the proposed provisions ; and (iv) the proposed signboard control system was beyond the scope of the Bill. <p>(b) The Administration's explanation that the proposed amendments were within the scope and the objective of the Amendment Bill which was to introduce measures to tackle the building safety problem through regular inspections and associated repairs to prevent buildings and windows from becoming unsafe.</p> <p>(c) the Chairman requested the Administration to provide a paper to</p>	Administration to take action

Time Marker	Speaker	Subject(s)	Action Required
		<p>address members' concern on whether the proposed CSAs to the Amendment Bill in respect of the surcharge for defaulted works; penalty for refusing to share cost of works; warrants for entry to individual premises and the control of signboards were within the scope of the Amendment Bill to make provision for regular inspections of buildings and the associated repairs to prevent the buildings from becoming unsafe.</p> <p>(d) Mr KAM's request for the Legal Adviser to advise on the above CSAs proposed by the Administration.</p>	<p>as required in paragraph 2 of the minutes</p>
<p>014326 – 014646</p>	<p>Mr Abraham SHEK Chairman Administration</p>	<p>(a) Mr SHEK's comments that the Administration should introduce a separate Bill if it intended to widen the BA's power to enter into private premises.</p> <p>(b) The Administration's clarification that the provisions sought to provide for BA to apply to the court for a warrant for entry into premises for inspection or carrying out necessary works, which was based on the existing power to enter into individual premises.</p>	
<p>014647 – 015657</p>	<p>Ms Miriam LAU Chairman Administration</p>	<p>(a) Ms LAU's view that the BA's staff should only be allowed to apply to the court for a warrant to enter into a private premises on building safety grounds.</p> <p>(b) Ms LAU's suggestion that the Administration should introduce a separate Bill for the proposals to allow more time for consideration by members.</p> <p>(c) The Administration's explanation of the practical need for the proposed</p>	

Time Marker	Speaker	Subject(s)	Action Required
		provisions.	
015658 – 015730	Mr Abraham SHEK Chairman	Mr SHEK's comments that the problems of access to sub-divided units for inspection could be resolved by invoking the existing Section 22 of BO.	
015731 – 015837	Chairman	The next meeting would be held immediately after the House Committee Meeting on 20 May 2011.	

Council Business Division 1
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23 July 2012