

立法會
Legislative Council

LC Paper No. CB(1)519/14-15
(These minutes have been seen
by the Administration)

Ref : CB1/BC/02/14/1

Bills Committee on District Cooling Services Bill

Minutes of third meeting
held on Monday, 5 January 2015, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present : Ir Dr Hon LO Wai-kwok, BBS, MH, JP (Chairman)
Hon WONG Ting-kwong, SBS, JP
Hon CHAN Hak-kan, JP
Hon Alan LEONG Kah-kit, SC
Hon WU Chi-wai, MH
Hon Tony TSE Wai-chuen, BBS

Member absent : Hon Cyd HO Sau-lan, JP

Public Officers attending : **For item I**

Mrs Dorothy MA
Principal Assistant Secretary for the Environment (Energy)

Miss Sheena YAP
Assistant Secretary for the Environment (Energy)²

Mr Harry LAI, JP
Assistant Director/Electricity & Energy Efficiency
Electrical and Mechanical Services Department

Mr CHEUNG Yuen-fong
Chief Engineer/Energy Efficiency B
Electrical and Mechanical Services Department

Mr YIP Man-kit
Senior Engineer/Professional Support 3
Electrical and Mechanical Services Department

Mr Peter SZE
Senior Government Counsel (Law Drafting Division)
Department of Justice

Mr Henry CHAN
Senior Government Counsel (Acting) (Law Drafting Division)
Department of Justice

Clerk in Attendance : Ms Shirley CHAN
Chief Council Secretary (1)1

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Miss Lilian MOK
Senior Council Secretary (1)1

Ms Mandy LI
Council Secretary (1)1

Action

I. Meeting with the Administration

(LC Paper No. CB(1)398/14-15(01) — List of follow-up actions arising from the meeting on 16 December 2014

LC Paper No. CB(1)398/14-15(02) — Administration's response to the issues raised at the meeting on 16 December 2014

Relevant papers

LC Paper No. CB(3)10/14-15 — The Bill

File Ref: ENB CR 4/2061/08 — Legislative Council Brief

Action

LC Paper No. LS5/14-15	— Legal Service Division Report
LC Paper No. CB(1)343/14-15(02)	— List of follow-up actions arising from the meeting on 25 November 2014
LC Paper No. CB(1)343/14-15(03)	— Administration's response to the issues raised at the meeting on 25 November 2014
LC Paper No. CB(1)272/14-15(01)	— Assistant Legal Adviser's letter dated 13 October 2014 to the Administration
LC Paper No. CB(1)272/14-15(02)	— Administration's reply to Assistant Legal Adviser's letter dated 13 October 2014
LC Paper No. CB(1)272/14-15(03)	— Background brief prepared by the Legislative Council Secretariat

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

Admin 2. The Bills Committee examined Part 1 and Part 2 (clause 4) of the District Cooling Services Bill ("the Bill"). The Administration was requested to –

Part 1 - Clause 2

- (a) in respect of the definition of "estimated maximum cooling capacity" (估計最高製冷量), consider amending the Chinese rendition "就獲區域供冷系統提供區域供冷服務的建築物而言，..." of the English text of the definition to reflect the legislative intent, which, according to clause 4 of the Bill, the capacity was furnished for the purpose of making an application to be an approved consumer of the district cooling services for a building under clause 4(1) and it appeared that the building should not have received the cooling services before the relevant approval was granted under clause 4(4);

Action

Part 2 - Clause 4

- (b) given that clause 4 of the Bill did not seem to preclude two or more persons who satisfied the requirements (which were stated in clauses 4(1), 4(2) and 4(3)) to make their respective applications, provide the considerations of the Director of Electrical and Mechanical Services ("DEMS") in deciding whether to grant the approval under clause 4(4) in respect of the applications concerned; and
- (c) provide DEMS's considerations in deciding whether to grant an approval under clause 4(4) in case where an owners' corporation of a building and another party that claimed to be responsible for the management of the same building had made their respective applications.

3. The Chairman reminded members that the next meeting of the Bills Committee had been scheduled for Tuesday, 13 January 2015, at 10:45 am.

II. Any other business

4. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 1
Legislative Council Secretariat
5 February 2015

Bills Committee on District Cooling Services Bill

**Proceedings of the third meeting
on Monday, 5 January 2015, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
000738 - 003113	Chairman Administration Mr WONG Ting-kwong	<p>The Administration briefed members on its response to the issues raised at the meeting of the Bills Committee held on 16 December 2014 (LC Paper No. CB(1)398/14-15(02)).</p> <p>Mr WONG Ting-kwong enquired about –</p> <p>(a) the respective numbers of years of operation of the district cooling systems ("DCSs") in Singapore and France; and</p> <p>(b) the charging arrangements in the event that the meters to be installed in buildings subscribing to district cooling services for measuring the cooling energy consumed by the buildings were found not registering correctly.</p> <p>The Administration responded that –</p> <p>(a) the DCS in Singapore had been in operation for over five years while the one in France over 40 years; and</p> <p>(b) as specified in clause 11(2) of the District Cooling Services Bill ("the Bill"), if the Director of Electrical and Mechanical Services ("DEMS") was of the opinion that it was impracticable or inappropriate to rely on a measurement under clause 11(1) for a period, the actual cooling capacity and actual cooling energy consumption of a building for that period might be determined in the manner that DEMS thought fit.</p>	
003114 - 005807	Chairman Mr Tony TSE Administration Assistant Legal Adviser 10 ("ALA10")	<p>Mr Tony TSE expressed concern about –</p> <p>(a) the legal justifications for the collection of district cooling services charges through legislative means;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) whether it was mandatory for all private non-domestic buildings in the Kai Tak Development ("KTD") to subscribe to district cooling services; and</p> <p>(c) whether the costs of running DCS would be shouldered by a few DCS users if the subscription rate of DCS was low due to the different development schedules of individual projects in KTD.</p> <p>The Administration responded that –</p> <p>(a) the Administration would require all private non-domestic projects in KTD to construct and maintain DCS substation to connect to DCS. Such requirement would be prescribed in the conditions of land sale. The Lands Department would consult the Electrical and Mechanical Services Department ("EMSD") to ensure that the compliance was to the satisfaction of EMSD before the issuance of Certificate of Compliance;</p> <p>(b) all public developments in KTD, which accounted for around 35% of the total air-conditioned floor area in the district, would subscribe to district cooling services. The remaining 65% was private non-domestic projects, such as shopping malls, hotels and office buildings. Given that district cooling services charges would be set at a competitive level comparable to the cost of individual water-cooled air-conditioning systems using cooling towers, there should not be economic incentive for private non-domestic building owners to install separate chiller plants in their buildings for air-conditioning purpose. As such, the possibility that the DCS in KTD had a low subscription rate should be slim;</p> <p>(c) district cooling services charges sought to achieve full cost recovery within the project life of DCS (i.e. 30 years). Since the cost recovery period was relatively long, short term fluctuation of subscription rate would not have substantial impact on the level of district cooling services charges.</p>	

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		<p>ALA10 referred members to the Administration's paper (LC Paper No. CB(1)343/14-15(03)) in which the Administration had cited the case of McCarthy & Stone (Developments) Ltd. v Richmond upon Thames London Borough Council [1992] 2 A.C. 48 to set out the need for legislation to provide for the collection of district cooling services charges. She pointed out that the Administration could propose to implement the service through a legislative proposal (i.e. the Bill) with a view to avoid challenges to the legality of district cooling services charges. She further stated the differences between charging the district cooling services through administrative arrangements and legislative means such as providing district cooling services through administrative arrangements could provide flexibility for the Administration to address different situations, whereas the use of legislative means could ensure that all the approved consumers would be treated according to the relevant piece of legislation.</p> <p>In addition, ALA10 pointed out that the Bill not only provided for the collection of district cooling services charges but also for the powers and duties in relation to the operation of the district cooling services such as access for inspection and maintenance, offences, penalties and appeal matters etc. which all required legislation.</p>	
<p>Clause-by-clause examination of the Bill (The Bill [LC Paper No. CB(3)10/14-15])</p>			
<p>005808 - 010740</p>	<p>Chairman Administration ALA10 Mr Tony TSE</p>	<p>Part 1 – Preliminary</p> <p><u>Clause 1 – Short title</u></p> <p>Members raised no query.</p> <p><u>Clause 2 – Interpretation</u></p> <p>In respect of the definition of "estimated maximum cooling capacity" (估計最高製冷量), ALA10 pointed out that the Chinese rendition "就獲區域供冷系統提供區域供冷服務的建築物而言，..." of the English text of the definition might not fully reflect the legislative intent, which, according to clause 4</p>	<p>Admin (paragraph 2(a) of the minutes refers)</p>

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		<p>of the Bill, the capacity was furnished for the purpose of making an application to be an approved consumer of the district cooling services for a building under clause 4(1) and it appeared that the building should not have received the cooling services before the relevant approval was granted under clause 4(4).</p> <p>The Chairman requested the Administration to consider amending the relevant Chinese rendition to reflect the legislative intent.</p> <p><u>Clause 3 – District cooling system in relation to which this Ordinance applies</u></p> <p>In response to Mr Tony TSE's enquiry about the application of the Bill, the Administration advised that Schedule 1 to the Bill specified the DCS(s) in relation to which the Bill applied. Currently, Schedule 1 to the Bill covered only the DCS in KTD.</p> <p>The Chairman said that under clause 4(4) of the Bill, DEMS might or might not approve an applicant to be a consumer of district cooling services for a building. If DEMS decided not to approve the application, he must notify the applicant of the decision and the reasons for the decision in accordance with clause 4(5) of the Bill.</p>	
010741 - 015820	Chairman Mr Tony TSE Administration Mr WU Chi-wai	<p>Part 2 – Provision of District Cooling Services</p> <p><u>Clause 4 – Approval of consumer of district cooling services</u></p> <p>Mr Tony TSE enquired about who might apply to DEMS for approval as the consumer of district cooling services for a building. The Administration advised that according to clause 4(1) of the Bill, an owner or occupier of a building or a person responsible for the management of a building might apply to DEMS to be the approved consumer of district cooling services for the building. Applicants were required to give an undertaking in accordance with clause 4(3) of the Bill. In the event that the approved consumer for a building had ceased to exist, any person</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>satisfying the requirements stated in clauses 4(1), (2) and (3) might make application for approval as the new consumer of district cooling services for the building. To enhance communication with individual approved consumers, EMSD would establish a customer liaison group to collect feedback on the operation and maintenance of district cooling services.</p> <p>In response to Mr WU Chi-wai's enquiry about whether an owners' corporation ("OC") of a building might apply to DEMS for approval as the consumer of district cooling services for the building, the Administration explained that an OC of a building might make application to DEMS in the capacity of "a person responsible for the management of the building" under clause 4(1)(b) of the Bill if the OC concerned was responsible for the management of the building, including matters relating to district cooling services. ALA10 supplemented that the term "person" in clause 4(1)(b) of the Bill might be a natural person or legal person.</p> <p>Mr Tony TSE and Mr WU Chi-wai expressed concern that there might be cases where more than one person might make their respective applications to DEMS for approval as the consumer of district cooling services for a single building. The Administration explained that the DCS at KTD was a centralized cooling system providing chilled water to the air-conditioning systems ("ACSs") installed in individual user buildings. Subject to different building designs, separate ACSs connecting to DCS might be installed in different parts of a user building. Given that the term "building" was defined in the Bill to include part of a building, any person might apply to be the approved consumer for any part of a building with a separate ACS connecting to DCS. As such, there would be more than one approved consumer within a user building. However, there would be only one approved consumer for each ACS connecting to DCS.</p> <p>The Administration was further requested to –</p> <p>(a) given that clause 4 of the Bill did not seem to preclude two or more persons who</p>	<p>Admin (paragraphs 2(b) and (c) of the minutes refer)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>satisfied the requirements (which were stated in clauses 4(1), 4(2) and 4(3)) to make their respective applications, provide the considerations of DEMS in deciding whether to grant the approval under clause 4(4) in respect of the applications concerned; and</p> <p>(b) provide DEMS's considerations in deciding whether to grant an approval under clause 4(4) in case where an OC of a building and another party that claimed to be responsible for the management of the same building had made their respective applications.</p> <p>In response to Mr WU Chi-wai's enquiry about whether the behaviours or activities of individual occupiers/tenants of a user building might jeopardize the operation and reliability of district cooling services, the Administration reiterated that the DCS at KTD was a centralized cooling system providing chilled water to the ACSs installed in individual user buildings. Hence, the Bill operated on the basis of approving a "consumer" in relation to a building and did not deal with the relationship between an approved consumer and individual occupiers/tenants of the building concerned. For individual occupiers/tenants of a building subscribing to district cooling services, as with the tenants or occupants of any other buildings using central ACSs, their use of air-conditioning services and other arrangements were to be decided and negotiated between them and the building owner or the management company.</p>	
015821 – 015944	Chairman	Date of next meeting	