

立法會
Legislative Council

LC Paper No. CB(1)617/14-15
(These minutes have been seen
by the Administration)

Ref : CB1/BC/02/14/1

Bills Committee on District Cooling Services Bill

Minutes of sixth meeting
held on Monday, 9 February 2015, at 8:30 am
in Conference Room 2B 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 II**

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 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. Confirmation of minutes

(LC Paper No. CB(1)519/14-15 — Minutes of the meeting held on
5 January 2015)

The minutes of the meeting held on 5 January 2015 were confirmed.

II. Meeting with the Administration

Follow-up to issues arising from previous meeting

(LC Paper No. CB(1)521/14-15(01) — List of follow-up actions
arising from the meeting on
29 January 2015

LC Paper No. CB(1)521/14-15(02) — Administration's response to
the issues raised at the meeting
on 29 January 2015

Action

Clause-by-clause examination of the Bill (starting from clause 22)

LC Paper No. CB(3)10/14-15	— The Bill
File Ref: ENB CR 4/2061/08	— Legislative Council Brief
LC Paper No. LS5/14-15	— Legal Service Division Report
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

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

Admin 3. The Administration was requested to –

Clause 22

- (a) in the light of the powers which were provided under clause 30 for an appeal board to determine an appeal made pursuant to clause 22 and given that clause 22 did not seem to specify that, in order to render a decision or direction to be appealable under clause 22, such decision or direction must be premised upon or be made as a result of an approved consumer's action or inaction, provide the legal justifications of excluding a decision to suspend or terminate district cooling services to a building under clause 7(1)(d), (e) or (f) and excluding a decision not to resume the services to a building under clause 8(2) where the services were suspended under clause 7(1)(d), (e) or (f) from clause 22(1);

Clause 24

- (b) given that under clause 24(4), a member of the appeal board panel was to be appointed for a term of three years and might be

Action

reappointed where each reappointment was for a term of three years, clarify whether a statutory limit in respect of the number of times of reappointment was intended to be imposed and if so, consider revising the drafting of the clause to this effect;

- (c) advise whether the Administration would stagger the appointments of members to an appeal board panel so as to avoid the expiry of appointments of all members at the same time and to ensure continuity of the panel's operation;

Clause 25

- (d) consider revising clause 25(2)(b) to reflect the intent that there must be at least one member appointed from each of the categories that were specified in clause 24(1)(b), (c) and (d); and

Clause 29

- (e) explain how clause 29 which empowered an appeal board to authorize inspection of installation could fit into the proceedings of an appeal board.

4. The Chairman reminded members that the next meeting of the Bills Committee had been scheduled for Monday, 16 February 2015, at 8:30 am.

5. The Chairman also advised that the Bills Committee would conduct a site visit to the Kai Tak Development to observe the operation of the district cooling system under construction on Tuesday, 24 February 2015, from 9:00 am to 12:30 pm.

(Post-meeting note: The notice of the visit was issued to members vide LC Paper No. CB(1)534/14-15 on 11 February 2014.)

III. Any other business

6. There being no other business, the meeting ended at 10:30 am.

Bills Committee on District Cooling Services Bill

**Proceedings of the sixth meeting
on Monday, 9 February 2015, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000412 - 000557	Chairman	The minutes of the meeting held on 5 January 2015 (LC Paper No. CB(1)519/14-15 were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000558 - 001712	Chairman Administration Mr WU Chi-wai 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 29 January 2015 (LC Paper No. CB(1)521/14-15(02)).</p> <p>Noting that the proposal for providing the discretionary power to the Director of Electrical and Mechanical Services ("DEMS") to reduce, waive or refund, in whole or in part, a charge, a fee or a deposit payable or paid in respect of a building subscribing to district cooling services under clause 15 of the District Cooling Services Bill ("the Bill") was in line with the arrangement provided in a number of existing legislation, including the Waterworks Ordinance (Cap. 102), Mr WU Chi-wai enquired under what circumstances the Water Authority might exercise such discretionary power under Cap. 102.</p> <p>The Administration responded that the exercise of the discretionary power under clause 15 would depend on the actual circumstances of each particular case. Given that the operation of the district cooling system at the Kai Tak Development and the local water supply system were different from each other technically, it was not appropriate to directly compare whether and how the discretionary power would be exercised under the Bill and Cap. 102.</p> <p>The Chairman pointed out that, according to the Administration, clause 15 of the Bill sought to provide a reserve power for DEMS to waive, reduce or refund a charge, a fee or a deposit on a case-by-case basis.</p>	

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		<p>Sharing with members his experience on lodging a complaint about high water charges, Mr WONG Ting-kwong considered clause 15 of the Bill necessary as DEMS should be provided with a reserve power to deal with any unforeseeable circumstances in future.</p>	
<p>Clause-by-clause examination of the Bill (The Bill [LC Paper No. CB(3)10/14-15])</p>			
<p>001713 - 010027</p>	<p>Chairman Assistant Legal Adviser 10 ("ALA10") Administration Mr WU Chi-wai Mr Tony TSE Mr Alan LEONG</p>	<p>Part 5 – Appeal</p> <p><u>Clause 22 – Appeal to appeal board</u></p> <p>ALA10 sought to clarify whether a person who was aggrieved by or did not agree with the DEMS's opinion made under clause 7(1)(d), (e) or (f) might lodge an appeal pursuant to clause 22.</p> <p>The Administration responded that –</p> <p>(a) decisions subject to appeal included a decision not to approve a person as a consumer of district cooling services, a decision to refuse to provide, suspend or terminate district cooling services and a decision relating to an improvement notice issued (including a direction contained therein);</p> <p>(b) clause 7 set out the different circumstances under which DEMS might suspend or terminate the district cooling services to a building. Clause 7(1)(b), (c) and (g) was related to the failure on the approved consumer's part to observe a requirement relating to the services and hence the DEMS's decision to suspend or terminate the district cooling services under such circumstances was appealable under clause 22;</p> <p>(c) clause 7(1)(d), (e) and (f) was related to repair or maintenance works required to be carried out in a building connecting to the district cooling system and therefore the DEMS's decision to suspend or terminate the services was made on the basis of technical considerations (instead of the merit of the case) which were not</p>	

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		<p>suitable to be dealt with by an appeal board;</p> <p>(d) any person who was aggrieved by or did not agree with the DEMS's decision made under clause 7(1)(d), (e) or (f) of the Bill might institute legal proceedings in the court to claim any alleged damages at the person's own volition, and such person might apply to DEMS for resuming district cooling services under clause 8(1).</p> <p>Notwithstanding the Administration's explanation, Mr Alan LEONG remained unconvinced that DEMS's decision or direction to suspend or terminate district cooling services to a building made under clause 7(1)(d), (e) and (f) was not appealable under clause 22. In the light of the powers which were provided under clause 30 for an appeal board to determine an appeal made pursuant to clause 22 and given that clause 22 did not seem to specify that, in order to render a decision or direction to be appealable under clause 22, such decision or direction had to be premised upon or be made as a result of an approved consumer's action or inaction (or that the action or inaction of the approved consumer concerned had to be part and partial of the decision or direction), Mr LEONG requested the Administration to provide the legal justifications of excluding a decision to suspend or terminate district cooling services to a building under clause 7(1)(d), (e) or (f) and excluding a decision not to resume the services to a building under clause 8(2) where the services were suspended under clause 7(1)(d), (e) or (f) from clause 22(1).</p> <p>ALA10 further requested the Administration to explain how clause 29 which empowered an appeal board to authorize inspection of installation could fit into the proceedings of an appeal board.</p> <p>In response to Mr WU Chi-wai's enquiry, the Administration pointed out that according to clause 22(2) of the Bill, an appeal under clause 22(1) against a DEMS's decision or direction did not suspend the decision or direction unless DEMS decided otherwise.</p>	<p>Admin (paragraph 3(a) of the minutes refers)</p> <p>Admin (paragraph 3(e) of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>Mr Tony TSE enquired whether the calculation of district cooling services charges was subject to appeal. The Administration responded that –</p> <p>(a) as Schedule 2 to the Bill had clearly set out the methods of calculation of district cooling services charges , it was unlikely that a person would lodge an appeal against the calculation of district cooling services charges; and</p> <p>(b) the Bill provided that an approved consumer of district cooling services for a building who doubted the accuracy of a meter, which measured the actual cooling capacity and actual cooling energy consumption of that building, could apply for testing of the meter. If the test result revealed that the meter was not registering correctly, EMSD had the power to determine the amount of consumption and capacity of district cooling services for the period during which the meter ceased to record properly based on technical evidence, records and other relevant circumstances.</p>	
010028 - 010327	Chairman Administration Mr Tony TSE	<p>Part 5 – Appeal</p> <p><u>Clause 23 – How to lodge an appeal</u></p> <p>In response to Mr Tony TSE's enquiry about whether the period for giving a notice of appeal could be extended to more than 14 days, the Administration responded that under clause 23(2)(b), DEMS might allow a longer notice period.</p>	
010328 - 012800	Chairman Administration ALA10 Mr WONG Ting-kwong Mr Tony TSE	<p>Part 5 – Appeal</p> <p><u>Clause 24 – Appeal board panel</u></p> <p>Given that under clause 24(4), a member of the appeal board panel was to be appointed for a term of three years and might be reappointed where each reappointment was for a term of three years, ALA10 sought clarification on whether a statutory limit in respect of the number of times of reappointment was intended to be imposed and if so, the Administration should consider revising the drafting of the</p>	Admin (paragraph 3(b) of the minutes refers)

Time marker	Speaker	Subject(s)	Action required
		<p>clause to this effect.</p> <p>The Administration responded that as a general rule, a non-official member of an advisory or statutory body should not serve more than six years in any one capacity (i.e. the "six-year rule"). While the "six-year rule" was the guiding principle adopted by government bureaux in making appointments of non-official members to advisory and statutory bodies, flexibility should be provided to government bureaux in extending the appointment of non-official members given the diverse needs of different advisory and statutory bodies. The Administration would provide clarification as requested by ALA10.</p> <p>Mr WONG Ting-kwong enquired whether, under clause 24(1)(d), an approved consumer of district cooling services for a building might be appointed as member of the appeal board panel and if so, how the Administration would handle the situation where all the four members appointed under clause 24(1)(d) to the appeal board panel were approved consumers.</p> <p>The Administration responded that –</p> <ul style="list-style-type: none">(a) the Administration would endeavour to ensure that the appeal board panel was broadly representative, comprising not only legal and engineering professionals but also people from different sectors of the community. Although under clause 24(1)(d), it was possible that an approved consumer might be appointed as member of the appeal board panel, the possibility that all the four members appointed under clause 24(1)(d) to the appeal board panel were approved consumers would be slim;(b) members of the appeal board panel would be required to disclose their interests upon their appointment to an appeal board to avoid any possible conflict of interests between them and the appeal cases lodged with them;(c) an appeal board would consist of five members appointed from among the members of the appeal board panel.	

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		<p>Except the Chairperson of the appeal board who would be appointed from the category of members specified in clause 24(1)(a), the other four members would be appointed from the three categories of members specified in clause 24(1)(b), (c), and (d). To encourage broad diversity in the appeal board, the Administration would appoint at least one member from each of the categories specified in clause 24(1)(b), (c), and (d) to the appeal board; and</p> <p>(d) the proposed appointment arrangement was in line with the one provided in the Buildings Energy Efficiency Ordinance (Cap. 610).</p> <p>Mr WONG Ting-kwong urged the Administration to ensure that the appeal board would have adequate representation of different sectors of the community, including approved consumers of district cooling services.</p> <p>Mr Tony TSE enquired whether a person with less than 10 years' experience of practice in the engineering profession in Hong Kong could be appointed as member of the appeal board panel under clause 24(1)(d). The Administration reiterated that the appeal board panel would be broadly representative, comprising not only legal and engineering professionals. Members appointed under clause 24(1)(d) had to be, in the opinion of the Secretary for the Environment ("SEN"), not from the engineering profession. Clause 24(1)(d) would thus enable the Administration to appoint people from different walks of life to the appeal board panel to provide diverse and balanced views in the hearing of an appeal case.</p> <p>Mr Tony TSE requested the Administration to advise whether it would stagger the appointments of members to an appeal board panel so as to avoid the expiry of appointments of all members at the same time and to ensure continuity of the panel's operation.</p> <p>In response to ALA's enquiry about the resignation arrangement for members of the appeal board panel, the Administration</p>	<p>Admin (paragraph 3(c) of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>explained that according to clause 24(5), a member of the appeal board panel might, at any time, resign from his or her office by issuing a notice in writing to SEN.</p>	
<p>012801 - 013659</p>	<p>Chairman Administration Mr WONG Ting-kwong Mr Tony TSE</p>	<p>Part 5 – Appeal</p> <p><u>Clause 25 – Appeal board</u></p> <p>Mr WONG Ting-kwong enquired –</p> <p>(a) whether the Administration would make new appointment if a member of the appeal board panel resigned from his or her office; and</p> <p>(b) about the remuneration arrangements under clause 25(4).</p> <p>The Administration responded that –</p> <p>(a) according to clause 24(1), SEN would appoint members to the appeal board panel from the four categories specified in clause 24(1)(a) to (d) and not more than four members would be appointed from each of the categories. As there was no requirement that the appeal board panel always needed to have four members from each category, the Administration might or might not make new appointment if a member of the appeal board panel from any of the four categories resigned from his or her office; and</p> <p>(b) remuneration would be given to members of an appeal board on a per-day basis and each member would be remunerated at \$920 per day. The rate would be reviewed regularly.</p> <p>Mr Tony TSE requested the Administration to consider revising clause 25(2)(b) of the Bill to reflect the intent that there should be at least one member appointed from each of the categories that were specified in clause 24(1)(b), (c) and (d).</p>	<p>Admin (paragraph 3(d) of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action required
013700 - 020055	Chairman Administration ALA10 Mr Tony TSE Mr WONG Ting-kwong	<p>Part 5 – Appeal</p> <p><u>Clause 26 – Proceedings of appeal board</u></p> <p>ALA10 pointed out that unlike clause 26(2) which stipulated that a question before an appeal board was required to be determined by a majority of those members present at the meeting at which the question was to be determined, section 36 of the Buildings Energy Efficiency Ordinance (Cap. 610) provided that any question before an appeal board was required to be determined by a majority of the members. She further asked the Administration to clarify how an appeal would be determined in case where different members were present at different meetings of an appeal board to hear an appeal case, but only those attending the last meeting at which the case was to be determined could determine the case.</p> <p>The Administration responded that all the questions raised and comments made by relevant parties present at a meeting of an appeal board would be recorded in minutes which would be made available to all members of the appeal board. As such, even if members were absent from some of the meetings of the appeal board, they would still have access to the arguments put forth by relevant parties and could determine the appeal case lodged with them at the meeting at which the case was to be determined. According to the Administration's experience, members of an appeal board would attend most meetings of the board.</p> <p>Mr Tony TSE was of the view that since all members of an appeal board would be kept informed of the discussions of the hearing through minutes of meetings of the board, any question put before the appeal board might as well be determined by a majority of the members of the board.</p> <p>The Administration explained that in general, members of an appeal board would have a discussion on the appeal case lodged with them at the last meeting at which the case was to be determined before making a final decision. Members absent from the meeting could not take into consideration the views and comments</p>	

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		<p>expressed in the discussion and might not be able to make an informed decision on the case. As such, the Administration considered it more desirable that any question before an appeal board was required to be determined by a majority of those members present at the meeting at which the question was to be determined. Nevertheless, the Administration would endeavour to ensure that meetings of an appeal board would be arranged at a time convenient to all members of the board.</p> <p>Mr WONG Ting-kwong considered the proposed rules and procedure for the proceedings of an appeal board under clause 26 reasonable. As the hearing of an appeal was in general required to be open to the public, relevant parties concerned could monitor the progress of the hearing and work of the appeal board.</p>	
020056 - 020238		The Chairman advised that the Bills Committee would conduct a site visit to the Kai Tak Development to observe the operation of the district cooling system under construction on Tuesday, 24 February 2015, from 9:00 am to 12:30 pm.	