

立法會
Legislative Council

LC Paper No. CB(1)618/14-15
(These minutes have been seen
by the Administration)

Ref : CB1/BC/02/14/1

Bills Committee on District Cooling Services Bill

Minutes of seventh meeting
held on Monday, 16 February 2015, at 8:30 am
in Conference Room 2A 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 Tony TSE Wai-chuen, BBS
- Members absent** : Hon Cyd HO Sau-lan, JP
Hon WU Chi-wai, MH
- 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 Patrick CHEUNG
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 Winnie LO
Assistant Legal Adviser 7

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)544/14-15 — Minutes of the meeting held on
29 January 2015)

The minutes of the meeting held on 29 January 2015 were confirmed.

II. Meeting with the Administration

Follow-up to issues arising from previous meeting

(LC Paper No. CB(1)548/14-15(01) — List of follow-up actions
arising from the meeting on
9 February 2015

LC Paper No. CB(1)548/14-15(02) — Administration's response to
the issues raised at the meeting
on 9 February 2015

Action

Clause-by-clause examination of the Bill (starting from clause 27)

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. With the aid of a power-point presentation, the Principal Assistant Secretary for the Environment (Energy) and the Assistant Director of Electrical and Mechanical Services/Electricity & Energy Efficiency briefed members on the charging proposal under the District Cooling Services Bill ("the Bill").

(Post-meeting note: A set of the power-point presentation materials was circulated to members vide LC Paper No. CB(1)565/14-15(01) on 16 February 2015.)

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

Admin 4. The Administration was requested to –

Clause 22

- (a) given that members were unconvinced of the Administration's explanation on excluding from clause 22(1) –
 - (i) a decision to suspend or terminate district cooling services to a building under clause 7(1)(d), (e) or (f); and

Action

- (ii) 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),

consider moving a Committee stage amendment ("CSA") to the effect that the two decisions mentioned in (i) and (ii) above would be appealable under clause 22(1); and

Clause 25

- (b) in the light of the Administration's response at paragraph 11 of its paper (LC Paper No. CB(1)548/14-15(02)), consider moving a CSA to reflect its intent to appoint at least one member from each of the three categories specified in clause 24(1)(b), (c) and (d) to an appeal board.

Way forward

5. The Chairman concluded that the Bills Committee had completed the clause-by-clause examination of the Bill and would consider the Administration's response to the issues raised in paragraph 4 above as well as the draft CSAs to the Bill to be proposed by the Administration at the next meeting scheduled for Thursday, 26 February 2015, at 8:30 am. The Administration would advise the date to resume the Second Reading debate on the Bill in due course.

6. The Chairman further reminded members 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.

III. Any other business

7. There being no other business, the meeting ended at 10:20 am.

Bills Committee on District Cooling Services Bill

**Proceedings of the seventh meeting
on Monday, 16 February 2015, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000511 - 000632	Chairman	The minutes of the meeting held on 29 January 2015 (LC Paper No. CB(1)544/14-15) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000633 - 005758	Chairman Administration Mr Tony TSE Mr Alan LEONG	<p>The Administration briefed members on its response to the issues raised at the meeting of the Bills Committee held on 9 February 2015 (LC Paper No. CB(1)548/14-15(02)).</p> <p>In the light of the Administration's response at paragraph 11 of LC Paper No. CB(1)548/14-15(02), the Chairman requested the Administration to consider moving a Committee stage amendment ("CSA") to reflect the Administration's intent to appoint at least one member from each of the three categories specified in clause 24(1)(b), (c) and (d) to an appeal board.</p> <p>Mr Tony TSE and Mr Alan LEONG were unconvinced that a decision to suspend or terminate district cooling services (or a decision to refuse to resume district cooling services) in the circumstances specified in clause 7(1)(d), (e) or (f) was not appealable under clause 22(1).</p> <p>The Administration responded that –</p> <p>(a) under the circumstances specified in clause 7(1)(d), (e) or (f), works would be necessitated either by the need to ensure that the district cooling system ("DCS") would operate smoothly and safely and was well maintained according to the professional standards of the industry, or by an emergency situation which required immediate action;</p>	Admin (paragraph 4(b) of the minutes refers)

Time marker	Speaker	Subject(s)	Action required
		<p>(b) the facts establishing the decisions made under clause 7(1)(d), (e) or (f), which might include technical issues relating to the operation and/or maintenance of DCS, should be simple and straightforward, and would therefore unlikely require an examination of the facts and/or merits of the case. In this regard, it would not be necessary to render such decisions appealable to the appeal board when they were already amenable to judicial review;</p> <p>(c) the Director of Electrical and Mechanical Services ("DEMS"), with his/her knowledge and experience in the operation of DCS, should be able to make professional judgment as to whether repair or maintenance works on DCS were required to be carried out. In this connection, DEMS's decisions or directions made under the circumstances specified in clause 7(1)(d), (e) or (f) should not be rendered appealable under clause 22(1);</p> <p>(d) it might not be appropriate for an appeal board which comprised members from different sectors of the community who might not be familiar with the professional standards of the industry in operating and maintaining DCS to handle cases involving DEMS's professional judgment about technical matters made under clause 7(1)(d), (e) or (f) ;</p> <p>(e) to minimize the impact of the suspension or termination of district cooling services on a user building, the Electrical and Mechanical Services Department ("EMSD") would liaise with the approved consumer for the building before carrying out relevant repair or maintenance works on DCS;</p> <p>(f) the original intention behind clause 29 in empowering an appeal board to conduct inspection of an installation or a facility did not include the purpose of varying or revoking a decision to suspend or terminate district cooling services (or a</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>decision to refuse to resume district cooling services) in the circumstances specified in clause 7(1)(d), (e) or (f). Rather, it was for an appeal board to handle appeals against decisions made under clause 22(1)(a), (b), (c), (d), (f), or (g) as on-site inspections could help the board to assess whether an approved consumer for a user building had carried out installations which had led to the decisions made under the respective clauses. In particular, inspection could help ascertain matters relating to the issue of and compliance with an improvement notice issued by DEMS under clause 18; and</p> <p>(g) whether or not a decision was appealable under an appeal mechanism was subject to different ordinances which targeted different situations.</p> <p>Notwithstanding the Administration's explanation, Mr Alan LEONG and Mr Tony TSE remained unconvinced. Mr LEONG pointed out that according to the Administration's response at paragraph 5 of LC Paper No. CB(1)548/14-15(02), it was possible that the facts establishing the decisions made under clause 7(1)(d), (e) or (f) might not include technical issues relating to the operation and/or maintenance of DCS. As such, he considered it necessary to render the decisions established upon these facts under clause 7(1)(d), (e) or (f) appealable.</p> <p>Mr Alan LEONG further pointed out that according to clause 25, an appeal board was to consist members from the engineering profession who should be able to make a determination on an appeal against the decisions made under clause 7(1)(d), (e) or (f) which might be related to technical matters.</p> <p>The Chairman said that he did not see any particular reason for not including in clause 22(1) a decision to suspend or terminate district cooling services (or a decision to refuse to resume district cooling services) in the circumstances specified in clause 7(1)(d), (e) or (f), although in reality it was unlikely that a person would lodge such an appeal. As</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>provided in clause 22(2), an appeal under clause 22(1) against a DEMS's decision or direction did not suspend the decision or direction unless DEMS decided otherwise. In this connection, he considered that this could minimize possible abuse of the appeal mechanism even if the decisions under clause 7(1)(d), (e) or (f) were to be made appealable. The Chairman also shared Mr Alan LEONG's view that it was undesirable to solve the grievances arising from DEMS's decisions or directions made under clause 7(1)(d), (e) or (f) by means of judicial review.</p> <p>Against this backdrop, the Administration was requested to consider moving a CSA to the effect that the two decisions below would be appealable under clause 22(1) –</p> <ul style="list-style-type: none"> (a) a decision to suspend or terminate district cooling services to a building under clause 7(1)(d), (e) or (f); and (b) 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). 	<p>Admin (paragraph 4(a) of the minutes refers)</p>
<p>Clause-by-clause examination of the Bill (The Bill [LC Paper No. CB(3)10/14-15])</p>			
<p>005759 - 010332</p>	<p>Chairman Mr Alan LEONG Administration</p>	<p>Part 5 – Appeal</p> <p><u>Clause 27 – Hearing of appeal</u></p> <p><u>Clause 28 – Reappointment of appeal board in case of certain vacancies</u></p> <p><u>Clause 29 – Appeal board may authorize inspection of installation etc.</u></p> <p><u>Clause 30 – Determination of appeal</u></p> <p>Members raised no query on the above clauses.</p>	
<p>010333 - 010538</p>	<p>Chairman Administration</p>	<p>Part 6 – Miscellaneous Matters</p> <p><u>Clause 31 – Presumptions and evidence in writing</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>Clause 32 – Delegation by Director</u></p> <p><u>Clause 33 – Director may specify forms</u></p> <p>Members raised no query on the above clauses.</p>	
010539 - 010656	Chairman Assistant Legal Adviser ("ALA") 7 Administration	<p>Part 6 – Miscellaneous Matters</p> <p><u>Clause 34 – Secretary may amend Schedules</u></p> <p>In response to ALA7's enquiry, the Administration advised that any amendment to Schedule 1 or 2 to the District Cooling Services Bill ("the Bill") would be made by means of subsidiary legislation subject to negative vetting by the Legislative Council.</p>	
010657 - 010758	Chairman Administration	<p>Schedule 1 – District Cooling System in relation to which this Ordinance Applies</p> <p><u>District Cooling System in relation to which this Ordinance Applies</u></p> <p>Members raised no query.</p>	
010758 - 014224	Chairman Administration Mr Tony TSE	<p>Schedule 2 – Charges for District Cooling Services</p> <p>With the aid of a power-point presentation, the Administration briefed members on the charging proposal under the Bill.</p> <p>In response to the Chairman's enquiry, the Administration explained that the operation and maintenance cost of DCS was included in the calculation of DCS tariff. EMSD would make use of the district cooling services charges and fees received to settle the operation and maintenance fees for the DCS operator who was employed by EMSD through a design-build-operate ("DBO") contract to carry out the construction and day-to-day operation of the DCS in the Kai Tak Development. The DBO contract was awarded through open tender.</p> <p>Mr Tony TSE enquired about the tariff adjustment mechanism provided in the charging proposal under the Bill. The Administration responded that DCS tariff</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>comprised two key components which were capacity charge and consumption charge. The consumption charge rate would be adjusted annually taking into account the rate of change in electricity tariff which would be announced by the supplier of electricity to DCS and publicized through the Internet by DEMS.</p> <p><u>Section 1 – Calculation of charges for district cooling services</u></p> <p><u>Section 2 – Capacity charge and capacity overrun charge</u></p> <p><u>Section 3 – Consumption charge</u></p> <p><u>Section 4 – Surcharge and further surcharge</u></p> <p><u>Section 5 – Capacity charge rate and consumption charge rate</u></p> <p>Members raised no query on the above sections.</p>	
014225 - 015117		Closing remarks	