

立法會
Legislative Council

LC Paper No. CB(4)1089/14-15
(These minutes have been seen
by the Administration)

Ref: CB4/BC/2/14

Bills Committee on Peak Tramway (Amendment) Bill 2015

**Minutes of the first meeting held on
Monday, 18 May 2015, at 8:45 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Jeffrey LAM Kin-fung, GBS, JP (Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon WONG Kwok-hing, BBS, MH
Hon Cyd HO Sau-lan, JP
Hon Paul TSE Wai-chun, JP
Hon Frankie YICK Chi-ming
Hon YIU Si-wing
Hon CHAN Han-pan, JP
Dr Hon Kenneth CHAN Ka-lok
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SIN Chung-kai, SBS, JP
Hon Tony TSE Wai-chuen, BBS

Member absent : Hon KWOK Wai-keung

**Public Officers
attending** : **Agenda item II**

Mr Andy CHAN, JP
Deputy Secretary for Transport and Housing
(Transport) 2

Miss Carrie CHANG
Principal Assistant Secretary for Transport and
Housing (Transport) 1

Mr Gilbert MO
Deputy Law Draftsman (Bilingual Drafting and
Administration)
Department of Justice

Mr Llewellyn MUI
Senior Assistant Solicitor General
Department of Justice

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (4)5

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Miss Mandy NG
Council Secretary (4)5

Ms Zoe TONG
Legislative Assistant (4)5

Miss Shanice LOK
Clerical Assistant (4)4

Action

I. Election of Chairman

Election of Chairman

Mr CHAN Kam-lam, the member with the highest precedence among those present at the meeting, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Mr SIN Chung-kai was nominated by Ms Cyd HO and the nomination was seconded by Dr Kenneth CHAN. Mr SIN Chung-kai accepted the nomination. Mr CHAN Kam-lam called for other nominations.

3. Mr Jeffrey LAM was nominated by Mr Christopher CHEUNG and the nomination was seconded by Mr YIU Si-wing. Mr Jeffrey LAM accepted the nomination. Mr CHAN Kam-lam called for other nominations.

Action

4. As there was no other nomination, Mr CHAN Kam-lam announced a vote by secret ballot. After all members present had cast their votes, Mr CHAN Kam-lam invited Ms Cyd HO and Mr Christopher CHEUNG who had nominated the two candidates to monitor the counting of votes.

5. Mr CHAN Kam-lam announced that three and six members present voted for Mr SIN Chung-kai and Mr Jeffrey LAM respectively. Mr CHAN Kam-lam declared Mr Jeffrey LAM elected as Chairman of the Bills Committee.

6. Members agreed that there was no need to elect a Deputy Chairman.

II. Meeting with the Administration

- | | | |
|----------------------------------|----|---|
| (LC Paper No. CB(3)625/14-15 | -- | The Bill |
| File Ref: THB(T)CR 2/5591/75 | -- | Legislative Council Brief issued by the Transport and Housing Bureau |
| LC Paper No. LS64/14-15 | -- | Legal Service Division Report |
| LC Paper No. CB(4)1006/14-15(01) | -- | Marked-up copy of the Bill prepared by the Legislative Service Division (Restricted to members only) |
| LC Paper No. CB(4)1006/14-15(02) | -- | Letter from the Assistant Legal Adviser to the Administration dated 6 May 2015 |
| LC Paper No. CB(4)1006/14-15(03) | -- | Administration's response to the Assistant Legal Adviser's letter dated 7 May 2015 |
| LC Paper No. CB(4)1006/14-15(04) | -- | Paper on Peak Tramway (Amendment) Bill 2015 prepared by the Legislative Council Secretariat (background brief)) |

ActionDiscussion

7. The Bills Committee deliberated (Index of proceedings attached at **Annex**).

Follow-up actions to be taken by the Administration

8. The Administration was requested to provide the following information –
- (a) whether the Administration had considered implementing the proposed mandatory lease arrangement by having Peak Tramways Company, Limited ("PTC") agreeing to surrender its present grant in respect of the relevant plots of land owned by it and by the Government making a re-grant under which the terms of the mandatory lease requirement for the operation of the peak tramway were added. If yes, the Administration was requested to provide the considerations of deciding not to employ the said means. If no, whether the Administration would consider employing the means, and the reason(s) for not taking it forward;
 - (b) in respect of essential premises and essential equipment under proposed section 11B and 11C of the Bill, the definition of "essential" and whether this definition was agreeable to PTC;
 - (c) relevant local and overseas case law(s) in respect of the proposed mandatory lease/sale arrangements being regarded as "*de facto* deprivation" of property under Article 105 of the Basic Law; and
 - (d) further supplementary information, if any, to address members' concerns raised at the meeting.

III. Any other businessInvitation of views

9. Members agreed to invite public views on the Bill by posting a general notice on the Legislative Council Website on the Internet and to invite PTC, the Central and Western District Council and the two legal bodies to present their views.

ActionDates of next meetings

10. Members noted that the next two meetings of the Bills Committee would be held as follows –

- (a) Meeting with the Administration on 2 June 2015, at 5:00 pm; and
- (b) Meeting with the Administration and deputations on 29 June 2015, at 8:30 am.

11. There being no other business, the meeting ended at 10:43 am.

Council Business Division 4
Legislative Council Secretariat
1 June 2015

**Proceedings of the first meeting of
the Bills Committee on Peak Tramway (Amendment) Bill 2015
on Monday, 18 May 2015, at 8:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Election of Chairman			
000107 – 000603	Mr CHAN Kam-lam Ms Cyd HO Mr SIN Chung-kai Dr Kenneth CHAN Mr Christopher CHEUNG Mr YIU Si-wing Mr Jeffrey LAM	Election of Chairman	
Agenda item II – Meeting with the Administration			
000604 – 001450	Chairman Administration	Briefing by the Administration on the Peak Tramway (Amendment) Bill 2015 ("the Bill") (Legislative Council ("LegCo") Brief, Ref.: THB(T) CR 2/5591/75)	
001451 – 002211	Chairman Mr WONG Kwok-hing Administration	<p>Having regard the information obtained during the visit to the Peak Tramways, Company ("PTC"), Mr WONG considered its upgrading plan acceptable. To ensure safety, he was concerned about retention of talents and transfer of technology if there was a change of operating right of peak tramway. He also urged the peak tramway operator to shoulder corporate-social responsibility by making arrangements of free rides for the elderly and persons with disabilities at timings it considered suitable.</p> <p>The Administration advised that –</p> <p>(a) there were about 50 staff supporting the operation of the peak tramway. In case that the operating right needed to change hands, it would be in the interest of the new operator to make appropriate arrangements to ensure that there was a readily available team of qualified and experienced staff to operate the peak tramway. The Administration would closely monitor the situation and where appropriate provide all necessary assistance; and</p> <p>(b) PTC was having a self-financing concession scheme similar to the Government's "Public Transport Fare Concession Scheme for the Elderly and Eligible Persons with Disabilities", under which eligible elderly passengers could travel on the peak tramway at \$2 per trip during specified</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>periods. The Government would relay the Member's view to PTC that they should continue to seek to identify possible ways to do more on the front of corporate social responsibility.</p>	
002212 – 002704	Chairman Mr Frankie YICK Administration	<p>In reply to Mr YICK, the Administration advised that –</p> <p>(a) if the new peak tramway operator could arrange access to the relevant parts of the two terminus sites and related permits from the owner through lease or sale, it was not necessary for the Government to trigger the mandatory lease requirement; and</p> <p>(b) from 1 January 2016 onwards, if the existing operator had intention to continue with the operation of the peak tramway upon the expiry of the operating right, it should notify the Government three years before the 10-year operating right expired. If there was no such indication from an existing operator or if the Government considered appropriate, the Government would engage a new operator in any manner that the Chief Executive in Council thought fit. In response to Mr YICK's specific questions, the Administration confirmed that that could be through tender or other means considered suitable at the time.</p>	
002705 – 003322	Chairman Mr YIU Si-wing Administration	<p>Given the peak tramway was essentially a tourism facility, Mr YIU welcomed the transfer of power and duties vested in Secretary for Transport and Housing under the Peak Tramway Ordinance to the Secretary for Commerce and Economic Development. Noting that the capacity of the new tramcars under upgrading plan would increase by 60%, Mr YIU enquired whether more land could be allocated for the expansion of the two termini to tie in with the increased capacity and accommodate more queuing passengers.</p> <p>The Administration advised that various departments had studied and found the preliminary design proposal of the upgrading plan worthy of support. If PTC, upon being granted a 10-year operating right commencing 1 January 2016 and then a 10-year extension of the right alongside the submission of the same upgrading plan with proven feasibility, made any such requests, the Government would be prepared</p>	

Time marker	Speaker	Subject(s)	Action required
		to favourably consider any reasonable request , including requests related to land.	
003323 – 010200	Chairman Dr Kenneth CHAN Administration Assistant Legal Adviser 10 ("ALA 10")	<p>In reply to Dr CHAN's concern about the upgrading of the peak tramway system other than the two terminus sites, the Administration advised that PTC's proposed upgrading plan included replacement of track rails and structural improvement of track foundation and tramway bridges, all of which were assets owned by PTC but located on government land. PTC would continue to be responsible for the repair and maintenance of these structures as well as the four intermediate stations, including the preservation of their historical structure. The Administration further advised that the site boundary of the Barker Road station as shown on the map showing the peak tramway area would be updated to reflect the actual situation on the ground.</p> <p>Dr CHAN was concerned about the mandatory lease arrangement proposed in the Bill. Specifically, he would like to know in detail why the mandatory lease arrangement was in conformity with Article 105 of the Basic Law ("BL 105") and whether there were relevant local or overseas caselaw(s).</p> <p>The Administration responded that –</p> <p>(a) under the Bill, the Chief Executive in Council was empowered to order mandatory sale of the essential equipment which was akin to expropriation and was likely to be regarded as "deprivation" under BL 105, which also covered <i>de facto</i> deprivation and required real value compensation to be paid without undue delay to the property owner; and</p> <p>(b) the proposed mandatory lease arrangement of the essential premises was different in that it would not amount to deprivation of property (because the ownership of the premises concerned would still be vested with PTC). Nevertheless, the Government sought to protect the interest of property owner as far as possible by requiring under the proposed arrangement the lessee to pay market rental to the lessor for the essential premises (including land).</p> <p>Concerns raised by ALA 10 in respect of the mandatory lease arrangement and the</p>	The Administration to follow up as per paragraph 8(c) of the minutes

Time marker	Speaker	Subject(s)	Action required
		Administration's response (LC Paper Nos. CB(4)1069/14-15 (02) and (03)).	
010201 – 010906	Chairman Mr SIN Chung-kai Administration	Discussion on the mechanism in dealing with dispute, if any, over the sum of compensation and any other terms under the mandatory sale/lease arrangements, and the regulation of peak tramway fares.	
010907 – 012156	Chairman Ms Cyd HO Administration	<p>Ms HO expressed concern and enquired about –</p> <p>(a) whether the proposed mandatory lease/sale arrangements would become a precedent, bringing significant impacts on public facilities and services, as well as private property rights;</p> <p>(b) whether there were other example(s) of a public facility situated on private and government lands;</p> <p>(c) in respect of footnote 5 in the LegCo Brief, (i) upon the expiry of the current lease for the Garden Road site in 2039, the mechanism in renewing the lease for another 75 years until 2114 which was beyond 2047; and (ii) how the operating right commencing 1 January 2016 could last for 20 years till 2035 if the Peak site was non-renewable and would expire in 2031.</p> <p>The Administration responded that –</p> <p>(a) the proposed exit mechanism was proposed to tackle a specific issue - to enable the new operator to gain access to premises and equipment essential to the operation of the peak tramway to minimize the risk of service disruption if and when exit was triggered, and the mechanism was compliant with the Basic Law regarding protection of private properties. There was no question of setting a precedent as such;</p> <p>(b) peak tramway was a unique facility in Hong Kong; and</p> <p>(c) footnote 5 basically set out what was provided for in the relevant land lease.</p>	
012157 – 013259	Chairman Mr Tony TSE Ms Cyd Ho Administration	Mr TSE expressed strong reservation against the mandatory lease arrangement and considered it very unfair to the lessor whose rental income could be significantly undermined because of the unusual tenancy arrangements as follows –	

Time marker	Speaker	Subject(s)	Action required
		<p>(a) as the proposed lease arrangements only applied to essential premises, non-essential premises, if any, would be subject to less favourable rental terms because of its low residual value; and</p> <p>(b) the proposed lease arrangement would last for at least 10 years, during which the lessor had no choice but to agree to any proposed alteration to the structure of the essential premises.</p> <p>Mr TSE considered it more proper for the Government to make mandatory sale arrangement in respect of the relevant parts of the two terminus sites, and the new operator should be required to pay real value compensation to PTC. If the parties concerned could not agree on the sum of compensation, the Government should make up the shortfall.</p> <p>The Administration advised that if there was a dispute over the sum of compensation, any of the relevant parties could go to the Lands Tribunal for adjudication, or they could resolve the dispute through arbitration if there was mutual agreement to do so. It was not suitable for the Government to intervene other than providing for, as proposed in the Bill, an open and transparent legal framework for the disputes to be resolved independently.</p> <p>The Chairman considered the operation of the peak tramway service unique and complicated, involving private property and public interest. He called on the Administration to handle related matters in a fair, impartial and open manner to ensure the smooth operation of the peak tramway.</p>	
013300 – 014701	Chairman Mr Paul TSE Administration	Mr TSE considered the protection of property right was the cornerstone of the rule of law. He enquired whether the Administration had considered implementing the proposed mandatory lease arrangement by having PTC agreeing to surrender its present grant in respect of the relevant plots of land owned by it and by the Government making a re-grant under which the terms of the mandatory lease requirement for the operation of the peak tramway were added. He remarked that negotiation for the re-grant of the land of the two termini owned by PTC could be made in the course of negotiating with PTC on the 10-year operating right commencing January 2016 which involved the use of government	The Administration to follow up as per paragraph 8(a) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>land. This would help obviate the need to make the said requirement in the law, and hence minimize the impact of implementing the proposed mandatory lease arrangement through legislation, which might be unprecedented in the legislation of Hong Kong. The Administration considered that it should not be feasible from the policy perspective. Nevertheless, the Transport and Housing Bureau would discuss further with the Lands Department and revert.</p> <p>Mr TSE referred to BL 6 which read "the Government shall protect the right of private ownership of property <i>in accordance with law</i>", and BL 105 which read "the Government shall, <i>in accordance with law, ...</i>". He enquired whether BL 6 and BL 105 had to be interpreted and operated with due regard to the current law.</p> <p>The Administration explained that right of private ownership of property was not an absolute right but subject to certain degree of restrictions. For example, under the Town Planning Ordinance (Cap. 131), changes in the use of land, including privately owned land, could be made from time to time. There were local caselaw supporting such restrictions. The Administration further explained that the Bill, if passed by LegCo, did impose new restrictions on the use of land and premises owned by PTC which would satisfy the requirement of "in accordance with law" under BL 105.</p>	
014702 – 015539	Chairman Ms Cyd HO Administration ALA 10 Mr Paul TSE	<p>Discussion on all relevant matters that must be taken into account by the Chief Executive in Council in granting the operating right as set out in proposed section 2B(3) of the Bill.</p> <p>ALA's concern about the use of the terminus sites and essential premises owned by PTC solely for the operation of the peak tramway.</p>	The Administration to follow up as per paragraph 8(b) of the minutes
Agenda item III – Any other business			
015540 – 015842	Chairman Ms Cyd Ho	Invitation of views Dates of next meetings	