立法會
Legislative Council

LC Paper No. CB(1) 2117/99-00
(These minutes have been seen by the Administration and cleared by the Chairman)

Ref : CB1/BC/10/99/2

Bills Committee on Buildings (Amendment) Bill 2000

Minutes of third meeting
held on Tuesday, 16 May 2000, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present	:	Hon Ronald ARCULLI, JP (Chairman) Hon HO Sai-chu, SBS, JP Hon Cyd HO Sau-lan Ir Dr Hon Raymond HO Chung-tai, JP Hon CHAN Kwok-keung Hon WONG Yung-kan Hon Howard YOUNG, JP
Members absent	:	Hon David CHU Yu-lin Hon Edward HO Sing-tin, SBS, JP
Attendance by invitation	:	Planning and Lands Bureau Mr Geoffrey WOODHEAD Principal Assistant Secretary (Buildings) Mr Johnny CHAN Assistant Secretary (Buildings)1 Buildings Department Mr K M MO Assistant Director of Buildings (Development) Mr Alex CHOW Chief Building Surveyor (Legal)

Department of Justice

Ms Carmen CHU
Senior Government Counsel

Ms Rayne CHAI
Government Counsel

Clerk in attendance : Mrs Mary TANG
Chief Assistant Secretary (1)6

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Mrs Eleanor LAM
Senior Assistant Secretary (1)2

I Meeting with the Administration
(LC Paper No. CB(1) 1580/99-00(02) -- Response from the Administration)

Building concessions for hotel developments

Referring to the letter dated 15 May 2000 from the Administration, the Principal Assistant Secretary /Planning and Lands (Buildings)(PAS/PL(B)) explained that the present scope of concession facilities to be exempted from gross floor area (GFA) calculations under the proposed Regulation 23A(3)(b) of the Building (Planning) Regulations had reflected the Administration's intent. It had also been agreed with the Federation of Hong Kong Hotel Owners that such facilities were unique and essential to hotel operation. As requested by members during the last meeting, a list of supporting facilities to be exempted from GFA calculation was prepared at Annex B of the letter. A Practice Note for Authorized Persons and Registered Structural Engineers (PNAP) would be issued to explain the Building Authority's intended discretion. The revised PNAP at Annex A of the letter would be brought into operation upon the passage of the Buildings (Amendment) Bill 2000 (the Bill).

2. In examining the proposed Regulation 23A(3)(b) of the Building (Planning) Regulation, the Chairman noted that the list of supporting facilities to be exempted from GFA calculation included under sub-paragraphs (i) to (iii) were not meant to be exhaustive. He pointed out that by circumscribing the list with "other similar supporting facilities" under sub-paragraph (iv), it would unnecessarily confine the scope of supporting facilities to be considered for exemption. Moreover, the criteria for exemption from GFA calculation under the revised PNAP appeared to be wider than what was provided under proposed Regulation 23A(3)(b)(i) to (iv) and no cross reference was made to PNAP in the Regulation. To allow more flexibility, he suggested that sub-paragraph (iv) should be amended to read

"other supporting facilities". Assistant Legal Adviser1(ALA)1 further suggested to qualify the supporting facilities as non-revenue generating. In response, the Senior Government Counsel advised that the drafting instructions were that the open-ended facilities to be included under sub-paragraph (iv) should be similar to what was provided under sub-paragraph (i) to (iii). PAS/PL(B) said that he did not consider the suggestions appropriate as offices which were not unique nor integral to hotel operation would also be included as supporting facilities. The Chairman said that he would prefer to leave the Building Authority the discretion to decide on the criteria for exemption and for these to be included in PNAP. To allow discretion on the part of the Building Authority while maintaining flexibility, PAS/PL(B) suggested and members agreed to amend Regulation 23A(3)(b)(iv) to read "other supporting facilities as approved by the Building Authority".

Offence provisions

3. As regards members' concern as to whether hotel owners who might not be aware of the unauthorized changes of use of concession areas should be held responsible for such changes under Regulation 23A(8), PAS/PL(B) said that the Administration did not consider that hotel owners should be exempted because the building concessions were granted by the Building Authority at the request of the owners. It was therefore incumbent upon the hotel owners, proprietors or occupiers to ensure that the concessions were not misused. That was the position for the existing offence under section 40(1B)(b) regarding material change of use under section 25(2) of the Buildings Ordinance. Regulation 23A(8) was consistent with this and also encompassed non-material change of use, such as changing a staff canteen into a fast food outlet. He was of the view that to require an element of knowledge to be proved by the prosecution under Regulation 23A(8) would considerably dilute the worth of the regulation and would be inconsistent with similar existing provisions in the main Ordinance.

4. The Chairman asked whether the owner or the management company should be charged where there was a material change of use or contravention of the legislation by the management company with the owner having no knowledge of the change. PAS/PL(B) said that a decision would be made on the facts of the case. In the circumstances cited by the Chairman, the management company rather than the owner would be prosecuted. The Chairman said that there should be no problem with large hotels contracted out to multinational hotel management companies because the management companies would be equally concerned about their reputation. However, it was difficult to expect the owners to physically inspect the hotel to see that there was no misuse of the concession areas. PAS/PL(B) said that when the licence was to be renewed, the Hotel Licensing Authority would carry out inspections of the hotel to ensure that its use was in compliance with the Ordinance. As for the owner, a mechanism should be in place whereby the management company would be reminded that it must not take any action which would go against the interest of the owner. He assured members that hotel owners would not be prosecuted for changes in uses which were initiated by the management company.

5. The Chairman said that the knowledge element on the change of use of the concession area was important. He was concerned that if the knowledge element was not included, a hotel guest as an occupier could also be charged with an offence for occupying a concession area where there had been a change of use initiated by the owner or management

company. PAS/PL(B) said that all prosecution actions had to go through thorough investigation on the facts of the case, and hotel guests would not be charged for changes in uses which were initiated by hotel owners or management.

6. Mr Howard YOUNG said that the owners would feel more comfortable if the provisions under Regulation 23A(8) were applicable to offences which were committed "knowingly". He pointed out that owners were not usually aware of the changes which were initiated by the management company. PAS/PL(B) said that since the owners had the benefit of the concession in the first instance, they should not be excluded from the liability under the regulation. Mr YOUNG further pointed out that for any changes of use which might have been initiated by the management company, a contract between the owner and the management company would have been signed, especially when the work would incur expenditure which would be charged back to the owner. On the other hand, there could be incidents where the hotel management company might not be aware of the change of use which was initiated by the owner, if the changes were made in the interim between changes of management. In order that the owners, proprietors and the occupiers would not be exposed to the threat of a prosecution, members felt that the regulation should be re-examined. PAS/PL(B) agreed to reconsider members' request to include the word "knowingly" in Regulation 23A(8) but stressed that this would have to be equally applied to hotel owners, proprietors and occupiers alike. The Chairman suggested that if the word "knowingly" was not acceptable, other formulation for statutory defence such as "tacit agreement" or "tacit approval" could also be considered. He reminded the Administration that the prosecution would have to prove the element of knowledge on the contravention before criminal liability could be imposed. PAS/PL(B) agreed that he would review the Regulation in consultation with the Prosecution Division of the Department of Justice.

> (*Post meeting note:* The Administration has subsequently agreed to move amendments to proposed Regulation 23A(8)(a) to include a statutory defence such that it shall be a defence for the person charged to prove to the satisfaction of the court that he did not know, nor could reasonably have discovered the contravention.)

7. ALA1 informed members that she had also sought clarification with the Administration on the policy intent of Clause 6(b) of the Bill which proposed to amend section 40 of the Ordinance. According to paragraph 17 of the LegCo Brief, the Administration proposed to increase the penalty in respect of a change of use without the prior approval of the Building Authority of a hotel or a hotel area which enjoyed concession. However, the legal effect of Clause 6(b) was to increase the penalty in respect of a failure to give notice of any intended material change in the use of a building under section 25(1) of the Ordinance, or in respect of a contravention of any condition of a permit granted by the Building Authority under section 42. Such failure or contravention was not limited to the change of use of a hotel or hotel area. PAS/PL(B) confirmed that the intention was not limited to the change of use of a hotel or hotel area. The LegCo Brief was therefore incorrect and he apologized for the mistake thereon.

Performance review of geotechnical design.

8. The Chairman said that since the issue had been examined in great length at the last meeting, it would not be further discussed.

Telecommunication and broadcasting requirements

9. PAS/PL(B) said that the Administration had identified two minor areas in which Committee Stage amendments were required. Under the Telecommunication (Amendment) Bill 1999, references to "telecommunication" were to be changed to "telecommunications". This was necessary because if the Telecommunication (Amendment) Bill 1999 was passed before the Building (Amendment) Bill 2000, references to telecommunication had to be correspondingly amended. He further pointed out that the proposed definition of "broadcasting" in the Building (Planning) Regulation was deficient in that section 13A of the Telecommunication Ordinance related only to sound broadcasting. Since it was the intention that it should include television broadcasting as well, the definition would be amended to read "broadcasting means transmission of sound or television programmes by satellite or terrestrial telecommunications intended for general reception". The Chairman asked if the general reception would include paid movies within the hotel. PAS/PL(B) said that the intention was to make it a mandatory requirement to have access facilities for the installation of telecommunications and broadcasting cables and ancillary equipment in new commercial, industrial, residential (other than buildings for single family residence) and hotel buildings. These facilities were intended for general reception and should not include reception for paid television or movie within a hotel. A new regulation 28A would be added to the Building (Planning) Regulations.

Registration of authorized persons and registered structural engineers

10. Referring to paragraph 1(a), (b) and (c) of Regulation 42 to Building (Administration) Regulations on the fees for the registration of authorized persons and registered structural engineers, Miss Cyd HO Sau-lan asked if the revised fee would be on a cost recovery basis. PAS/PL(B) affirmed that this was the case and that following a costing review, there had been a reduction in the registration fees for a successful applicant.

Technical amendments

11. Members noted that definitions were added or redefined under Regulation 2 of the Building (Planning) Regulations. ALA1 pointed out that there should be a technical amendment on the definition of "industrial building" because the reference to Building (Refuse Storage Chambers and Chutes) Regulations would be amended under another provision. PAS/PL(B) confirmed the required amendment. As mentioned earlier, the definition of "broadcasting" would also need to be amended.

Commencement dates

12. ALA1 said that Clause 1(3) of the Bill proposed that amendments made to section 40 of the main Ordinance under Clause 6 should come into operation at the beginning of the day on which the Bill was published in the Gazette as an Amendment Ordinance. However,

paragraph 4 of the Schedule to the Bill would not commence until the day to be appointed by the Secretary for Planning and Lands. Since both provisions were related to offences in connection with the change in use of hotels, she asked if the Administration would consider the two together or separately. PAS/PL(B) said that consideration would be given to synchronizing the commencement of offence provisions under Clause 6(a) and (b) with paragraph 4 to the Schedule. This would require a technical amendment to Clause 1, so that the offence provisions in Clause 6 regarding the amendments made to section 40 would tie in with the commencement of the new Regulation 23A under paragraph 4 of the Schedule to the Bill.

Refuse storage and material recovery chamber

13. Members noted the amendments to the Building (Refuse Storage Chambers and Chutes) Regulations, which included the title, interpretation, and the consequential amendments on the regulations. ALA1 said that she had sought clarification with the Administration on the amendment to Regulation 3 which proposed building plans to be provided for refuse storage and material recovery chambers but such requirement was not mentioned in the new Regulation 4B regarding refuse storage and material recovery rooms which were provided on a floor of a building. The Administration had advised that the intent was only to impose a requirement for a chamber and not a room on any floor.

14. The Chairman noted that Regulation 4B under paragraph 11 of the Schedule to the Bill provided that where refuse storage or material recovery rooms were provided, they should be so designed to comply with the same requirements as that of a refuse storage or material recovery chamber. He asked whether these rooms which were already existing in a building would need to be changed to comply with the new requirements of a chamber. PAS/PL(B) said that the intent was that there should be a material recovery chamber for each building. Material recovery rooms on each floor were not a requirement. If material recovery rooms were to be provided on each or some floors of or new building, then they should be so designed to comply with the requirements of a chamber. The Assistant Director of Buildings (Development)(AD of B(Dev)) clarified that the purpose of the provision was to allow flexibility for the authorized person in designing the building and to allow refuse storage and material recovery facilities to be exempted from GFA calculation. The Chairman said that the requirement should not be a cause of concern for new buildings. He was more concerned that Regulation 4B was written in such a way that the existing facility of a building would need to comply with the new requirement and this might not be possible in some cases.

15. PAS/PL(B) said that the Buildings Ordinance had provided for situations for introduction of new regulations and that section 39(2) of the Ordinance had made it clear that new requirements would only apply to new building works and not existing buildings. As the new provision did not have retrospective effect, existing refuse storage and material recovery rooms need not comply with the new requirements. The Chairman pointed out that although hotels were existing buildings, they had to comply with the new fire regulations which had been changed. PAS/PL(B) said that the situation was different because it was stated specifically that the new fire regulations had to be complied even for existing buildings. If it was not specifically stated, then section 39 should apply. The Chairman was not convinced, pointing out that regulation 4B did require the refuse storage

and material recovery rooms to comply with the requirements of a chamber. ALA1 confirmed that the new regulations would not apply to existing building, having relied on the principle stated in the Interpretation and General Clauses Ordinance, Cap 1 that an ordinance would come into effect only on publication or on the commencement date. For the purpose of avoiding confusion, consideration could be given to provide for a savings provision under the proposed Building (Refuse Storage Chambers and Chutes) Regulations for existing refuse storage and material recovery rooms. The Chairman said that he agreed in principle to the amendments but was only concerned about the literal meaning of regulation 4B. He wished to be assured that existing buildings would not be affected as a result of the passage of the Bill and requested ALA1 to sort it out with the Administration

(*Post meeting note:* In its reply to the Bills Committee circulated vide LC Paper No. CB(1) 1636/99-00(02), the Administration confirmed that there was no need for a savings provision as the new requirements would only apply to new building works.)

Floor space calculation for refuse storage and material recovery chamber

16. Members noted the new regulations 12A, B and C of the Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) Regulations and had no comments on the new provisions. On the amended schedule of floor space for the material recovery chamber/refuse storage and material recovery chamber, the Chairman noted that the new requirement was more stringent and larger floor space for material recovery was required for various types of buildings. AD of B(Dev) said that in the majority of the cases, larger floor space would be required. The factor of domestic building would be changed from 440 to 347 and for non-domestic building it would be changed from 1,320 to 925. In addition to domestic and non-domestic building, industrial building would also be included to provide floor space for the material recovery chamber. Having regard to the different factors in calculating floor space for material recovery chamber, the Chairman asked if it would be simpler if industrial buildings would be regarded as composite buildings for the purpose of such calculation. AD of B (Dev) explained that a composite building referred to a building which was partly domestic and partly non-domestic, where as an industrial building could be used either as an office or for industrial use. If certain floors of an industrial building were designated as offices and other floors designated for industrial use, the factors for calculating the floor space for the material recovery chamber could be apportioned accordingly.

17. Members proceeded to examine the Bill clause by clause and made no further comments apart from the concerns raised earlier.

Letter from Federation of Hong Kong Hotel Owners
(LC Paper No. CB(1) 1615/99-00(01))

18. Regarding the query raised by the Federation of Hong Kong Hotel Owners on the need for inclusion of new offence provisions under proposed Regulation 23A(8)(a) when offence provisions were already provided under section 25 of the Ordinance, PAS/PL(B) explained that section 25 of the Buildings Ordinance related to a material change of use whereas Regulation 23A(8)(a) referred to non-material change of use as well as material

change of use. If a staff canteen was changed to a fast food outlet and assuming that there was no building work done, then it would be a non-material change of use and as such it would not be caught by section 25 of the Ordinance. As regards the Regulation 23A(5), ALA1 said that the hotel owners were concerned that the Administration was proposing a deeming provision in which if no licence was issued under section 8 or renewed under section 9 of the Hotel and Guesthouse Accommodation Ordinance, or that an order of exclusion was in effect under section 3 of that Ordinance, then any use of the hotel building would be deemed to be a change of use other than that of a hotel. PAS/PL(B) said that the purpose of Regulation 23A(5) was to ensure that the use of a hotel which enjoyed concessions would serve and continue to serve the tourism industry and would not be changed to a use other than that of a hotel. The owner of the hotel would need to apply for permission for any changes of use. As the hotel owners might have misunderstood the provision of the Regulation, PAS/PL(B) said that he would meet with the Federation of Hong Kong Hotel Owners the following day and would try to identify and address their concerns. A report would then be made to the Bills Committee on the outcome of the meeting with the Federation.

II Any other business

19. Members agreed that the fourth meeting would tentatively be held on Tuesday, 23 May 2000 at 4:30 pm. Upon receipt of the Administration's reply to the concerns raised by the Bills Committee, members would then decide on the need to proceed with the meeting.

(Post meeting note: Members had accepted the Administration's reply on 19 May 2000 which was circulated vide LC Paper No. CB(1)1636/99-00 and agreed that the meeting on 23 May 2000 need not be held.)

20. There being no other business, the meeting was adjourned at 4:00 pm.

Legislative Council Secretariat
23 October 2000