

**Information Paper for LegCo Panel on Planning, Lands & Works
Meeting on 6 November 2000**

**PROPOSED CHARGING AND PENALTY SYSTEM FOR
ROAD OPENING WORKS**

Purpose

1. This Paper presents an outline of the proposal to tighten control over promoters and contractors in connection with road excavation works. The Paper also delineates the updated proposed fee structure for recovery of the costs incurred by Government for administering the Excavation Permit (EP) system.

Introduction

2. Road excavation works are frequently carried out by the Highways Department (HyD), utility undertakers and many others throughout the Territory for the purposes of expanding, improving and maintaining the road or utility networks to better serve the community. However, these works inevitably occupy road space and cause disruption to traffic and inconvenience to the public despite proactive planning and control by the Government departments concerned.

3. Road excavation works normally involve two (often independent) parties, namely the promoter (e.g. a utility undertaker) for whom the work is carried out and the contractor who actually carries out the work. At present, the promoter obtains an EP under the Land (Miscellaneous Provisions) Ordinance (LMPO) for making the road excavation, whilst in practice, the contractor carries out the works on site. So far, no fees have been charged to recover Government's costs incurred for processing these EPs and for carrying out the related inspections.

4. A Road Opening Working Party (ROWP), chaired by the Secretary for Works, set up a Working Group in mid-1995 to consider necessary amendments to LMPO to charge promoters for the issue of EPs and to explore possible penalty systems for road excavation works. A study was completed and a preliminary proposal was made in early 1996. Following a consultation process, a revised proposal was presented to the utility undertakers and the LegCo Panel on Planning, Lands and Works in October and November 1996 respectively.

5. The Director of Audit in his report in 1991, invited attention to the need to reduce incidence of delays in the completion of utility works on roads and the substantial financial implications for the Government due to the delay in implementing the EP fee. In 1995, the Director of Audit reiterated that a penalty should be imposed on utility operators who delayed their works without good reasons and that the EP fee should be implemented as soon as possible.

6. A revised proposal was presented to the LegCo Panel on Planning, Lands and Works on 13 January 2000. A number of questions were raised by the Members. The Administration's responses to those questions which are still valid (except that on the fees) are reproduced in Appendix A to this Paper.

7. Following the above LegCo Panel meeting, the Administration also undertook to study the effect of the legislation on utility undertakers. The Administration commissioned a 'Regulatory Impact Assessment' (RIA) study on 'Introduction of Permit Fee and Financial Disincentive Scheme for Road Opening Works' in May 2000. As part of the study, the consultant presented a two-day workshop at which many major utility undertakers participated. During the workshop, the views of the utility undertakers were given. Their main objection was the need to pay a fee for road excavation. The report of the RIA study considered that Government's proposal was acceptable.

8. The proposal is now finalized. No major changes have been made except that the proposed charge rates have been updated based on cost information in the financial year 1999-2000 and projected to 2001-02.

Proposed EP System

9. The following system is now proposed :

- (a) A promoter has to obtain an EP for excavation works on unleased land.
- (b) Excavation without a valid EP is permitted in case of emergency, namely, prevention of injury, saving of life, prevention of damage to property and prevention of serious interruption or disruption to any public transport system or utility services.

- (c) With appropriate amendment to the LMPO, an EP issued to the promoter is deemed to be issued to any independent contractor employed by the promoter for carrying out the excavation.
- (d) To ensure that the independent contractor is aware of the terms of the EP, the contractor is required to acknowledge that he has received a copy of the EP together with its conditions.
- (e) If the contractor employs a sub-contractor for carrying out the excavation works, an EP issued to the contractor is also deemed to be issued to his sub-contractor. However, the contractor is required to supervise his sub-contractor and if the sub-contractor fails to comply with the EP conditions, the contractor shall be liable as if he had personally committed the offence.

10. An EP is normally issued for a specific period and for a particular project. It follows that an EP is required for every project under most circumstances and they shall be valid for the period specified therein or as may be extended by the Authority upon application.

11. The current requirement and arrangement for advance notification and coordination of road excavation activities through the Road Opening Coordinating Committees of HyD shall continue.

12. For Government works which are to be carried out by an independent contractor, the contractor (rather than the Government department as the promoter) is required to obtain an EP direct from the Authority for road excavation works.

Proposed Fee Structure

13. The following fees are proposed to recover the full cost incurred in vetting applications for and issuing the EP, and in carrying out inspections to ensure compliance. The fees which are different from that proposed to this Panel in January 2000, were reviewed by the departments concerned and updated to 2001-02 price level:

The EP applicant (i.e. a utility undertaker or a private developer) has to pay :

Excavations in streets maintained by Highways Department		
	<u>Description</u>	<u>Fee</u>
(i)	for issue of an EP	\$1,440
(ii)	for an extension of an EP, if required	\$375
(iii)	a daily charge for the duration of the EP including any extension, if required.	\$31 per day

Excavations on other unleased land (Lands Department is to deal with these applications)		
	<u>Description</u>	<u>Fee</u>
(i)	for issue of an EP	\$3,060
(ii)	for an extension to an EP	\$400

14. The above proposal is based on the projected cost in the financial year 2001/02. The basis of the calculation of the fees is presented in Appendix B.

15. For Government works, Government will have to pay its contractors and ultimately bear the cost of the EP. To save Government's administrative effort, Government contractors are not required to pay the related EP fees. However, in deriving the proposed fees, the cost is assumed to be shared by all EP works. Internal arrangement will be established such that Government will bear its own portion of the cost and will not be subsidized by other EP applicants.

Proposed Penalty System

16. Breach of EP conditions is an offence under section 8(4) of the LMPO which carries a maximum penalty of \$5,000 and 6 months' imprisonment. Under the current practice, it is the promoter being the permittee, not his contractor, who is to be prosecuted should there be a breach of the EP conditions. Such arrangement is not satisfactory as normally it is the contractor who takes the full control of the site and violates the EP conditions. It may be unfair to penalize the promoter instead of the contractor. With the proposal that the contractor shall be deemed to be a permittee, action can be taken to prosecute the contractor if he is found to be in breach of any EP conditions.

17. A prosecution team will be set up in HyD who will inspect EP sites which have received a warning from HyD's inspectorate staff regarding areas of non-compliance identified during their routine inspections. Where appropriate, the prosecution team will collect evidence and institute prosecution action against the permittee i.e. the promoter or the independent contractor as appropriate.

Tightening Control in Respect of Idle/Inactive Sites

18. In order to tighten up control on road excavation works, the following Condition has been included in EPs :

“The Permittee shall carry out the works for the purposes for which excavation is permitted to be made under this Excavation Permit with such despatch as is reasonably practicable. The Permittee shall therefore ensure that the excavation is not left open without being actively worked on during any working day. For the purpose of this Condition a working day shall mean the period between 8:00 a.m. and 6:00 p.m. on any day which is not a Sunday nor a public holiday. If it is necessary on technical grounds for the excavation to be left open and not be worked on during any working day, the Permittee shall, unless obtaining the Authority's prior permission to do otherwise, cover the excavation by steel plate or other suitable means in such a manner so as to allow the area to be reopened for the safe and reasonably nuisance-free passage of vehicular and/or pedestrian traffic.”

19. The Authority will take action to prosecute a permittee for any breach of EP conditions including the situation described in para 18.

Increase Maximum Fine in LMPO

20. It is considered that the prosecution of contractors against the breach of any EP conditions would be a direct and effective way in dealing with isolated default incidents by any contractor engaged in road opening work. However, the maximum fine of \$5,000 in section 8(4) of LMPO as mentioned earlier has remained at the same level since enactment of the Ordinance in 1972. In order to reflect the serious consequences of the offence, it is proposed to amend LMPO to increase this maximum level of fine to Level 5¹ on the basis of a similar purchasing power.

Computerized Utility Management System (UMS)

21. HyD has developed the UMS under the assistance of the Information Technology Services Department. Amongst the various benefits of introducing the UMS, the processing of EP applications has been more properly coordinated.

22. Under the existing practice, an applicant has to complete and submit a standard form to HyD when applying for an EP. Upon scrutinizing the application and finding it satisfactory in all respects the authorized staff will indicate approval by signing and returning the form to the applicant.

23. With the coming into effect of the Electronic Transactions Ordinance and implementation of the UMS, for most applicants (essentially the utility undertakers) it would be technically feasible for EP applications to be forwarded to HyD through electronic media. However, non-UMS users can also submit their applications through other electronic means. The approved EPs can also be returned to the applicants through UMS or other electronic media. It is anticipated that substantial effort in administering paper applications could be saved, not to mention the significant saving in delivery time. We propose to make statutory provisions for processing EP applications and granting EPs through electronic media as well as for legalizing the records of such applications on the Authority's computer system.

¹ The maximum penalty under this level is \$50,000 and \$25,000 for level 4.

Transitional Arrangements

24. It is proposed that the new legislation, so far as relevant, will apply to all existing and new permits, but the new fees will only apply to new permits or extensions to existing permits which are granted after the date on which the legislation comes into effect.

Way Forward

25. In order to implement the proposals described in this Paper, LMPO has to be amended accordingly. To this end, the Administration aims to introduce a Bill into the Legislative Council in February 2001 to amend the LMPO.

Works Bureau
October 2000

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APPENDIX A

- (a) *Numbers of road excavation permits issued to contractors working on behalf of private utility undertakers and Government departments in the past two years:*

	No. of road excavation permit/works order issued	
	Year 1998	Year 1999
Excavation permit issued to private utility undertakers	18376	17430
Excavation permit issued to DSD and WSD	4042	4388
Works order issued to HyD contractors ^(note)	46387	47881

Note : The figures for road opening include orders for very minor works such as repair of traffic signs and railings etc.

- (b) *Prosecution figures in respect of contravention of EP conditions by Government contractors and utility undertakers in the past two years:*

In 1996, the then AGC advised that there was a grey area between the then Crown Land Ordinance [the current Land (Miscellaneous Provisions) Ordinance] and the practice of issuing EPs, that might render prosecution not successful. Under the existing practice, EPs are issued to works promoters (i.e. utility undertakers in most cases). However, under most circumstances, the actual excavation works are carried out by independent contractors who have not been issued the EP. AGC have reservation on prosecuting a works promoter who does not in fact carry out any excavation work. They have also cast doubt on whether the contractor to whom no EP has been issued could be prosecuted on contravention of EP conditions. In view of the uncertainty, there was no prosecution in respect of contravention of EP conditions in the past two years.

Highways Department
Fees for Excavation Permit System
Cost at 2001-02 Prices

	Issue of EP \$	Issue of extension EP \$	Daily Fee in respect of EP/ extension EP \$
Staff Costs	26,737,225	4,229,682	38,407,228
Departmental Expenses	302,909	45,256	419,802
Accommodation Costs	655,590	98,966	914,437
Services by other departments	48,554	7,086	66,325
Central Administration Overhead	672,459	101,290	936,129
Cost of the computerised UMS	3,118,958	1,015,521	7,484,055
Total Cost	<u>31,535,696</u>	<u>5,497,801</u>	<u>48,227,976</u>
No of permit / permit-day	21,948	14,685	1,558,308
Unit cost	1,437	374	31
Proposed fees	1,440	375	31

DEPARTMENT : Highways

JOB DESCRIPTION : Excavation Permit

COST ELEMENT : Staff Costs

A. EP Administration - Staff Cost

Grade	Equivalent	Annual Staff	Projected Staff	Total Amount		Task1 - Issue EP Staff Cost	Task2 - EP Ext Staff Cost	Task3 - EP Daily Staff Cost	Total
	No. of Staff (A)	Cost Per Ready Reckoner No.99/1 (B)	Cost for 2001/2002 (B) x 1.03 (C)	(A) x (C) (D)	(D) + Departmental Administrative Overhead				
		\$	\$	\$	\$	\$	\$	\$	\$
Senior Engineer	1.3	1,800,156	1,854,161	2,410,409	2,758,901	1,098,318	160,292	1,500,290	2,758,901
Engineer/Assistant Engineer	9.7	1,243,332	1,280,632	12,422,130	14,218,094	5,660,223	826,071	7,731,799	14,218,094
Chief Technical Officer	2.4	1,175,544	1,210,810	2,905,945	3,326,080	1,324,112	193,245	1,808,722	3,326,080
Senior Inspector of Works	3.5	1,075,476	1,107,740	3,877,091	4,437,632	1,766,621	257,826	2,413,184	4,437,632
Inspector of Works	12.3	665,652	685,622	8,433,145	9,652,390	3,842,617	560,804	5,248,970	9,652,390
Assistant Inspector of Works	18.9	422,700	435,381	8,228,701	9,418,388	3,749,460	547,208	5,121,720	9,418,388
Works Supervisor I	15.0	351,720	362,272	5,434,074	6,219,720	2,476,071	361,366	3,382,284	6,219,720
Works Supervisor II	17.4	281,832	290,287	5,050,993	5,781,254	2,301,517	335,891	3,143,846	5,781,254
Senior Technical Officer	2.3	664,884	684,831	1,575,110	1,802,836	717,709	104,745	980,382	1,802,836
Technical Officer	6.5	391,368	403,109	2,620,209	2,999,033	1,193,915	174,244	1,630,874	2,999,033
Assistant Clerical Officer	1.0	329,088	338,961	338,961	387,967	154,450	22,541	210,977	387,967
Clerical Assistant	6.0	223,332	230,032	1,380,192	1,579,737	628,893	91,783	859,061	1,579,737
				54,676,960	62,582,033				

B. Utility Management System (UMS) - Staff Cost (shared by both EP system and HyD works)

Staff Cost for R&D Division, HyD

Grade	Equivalent	Annual Staff	Projected Staff	Total Amount		Task1 - Issue EP Staff Cost	Task2 - EP Ext Staff Cost	Task3 - EP Daily Staff Cost	Total
	No. of Staff (A)	Cost Per Ready Reckoner No. 99/1 (B)	Cost for 2001/2002 (B) x 1.03 (C)	(A) x (C) (D)	(D) + Departmental Administrative Overhead				
		\$	\$	\$	\$	\$	\$	\$	\$
Senior Engineer	0.5	1,800,156	1,854,161	927,080	1,061,656	187,819	61,153	450,680	699,652
Engineer/Assistant Engineer	1	1,243,332	1,280,632	1,280,632	1,466,529	259,446	84,475	622,551	966,472
Senior Technical Officer	1	664,884	684,831	684,831	784,242	138,742	45,174	332,916	516,831
Technical Officer	1	391,368	403,109	403,109	461,625	81,667	26,590	195,963	304,220
Assistant Clerical Officer	0.5	329,088	338,961	169,480	194,082	34,335	11,179	82,389	127,904
				3,465,132	3,968,133				

ITSD Projected Staff Cost for 2001/2002

Grade	Equivalent	Annual Staff	Projected Staff	Total Amount		Task1 - Issue EP Staff Cost	Task2 - EP Ext Staff Cost	Task3 - EP Daily Staff Cost	Total
	No. of Staff (as per PIDR) (A)	Cost per Ready Reckoner No. 99/1 (B)	Cost for 2001/2002 (B) x 1.03 (C)	(A) x (B)	(A) x (B)				
		\$	\$	\$	\$	\$	\$	\$	\$
Senior System Manager	0.5	1,687,752	1,738,385	869,192	869,192	153,770	50,067	368,978	572,815
System Manager	1	1,123,248	1,156,945	1,156,945	1,156,945	204,677	66,642	491,131	762,450
Analyst Programmer I	4	709,092	730,365	2,921,459	2,921,459	516,841	168,281	1,240,178	1,925,300
Analyst Programmer II	1	433,476	446,480	446,480	446,480	78,988	25,718	189,534	294,239
Clerical Officer	2	458,328	472,078	944,156	944,156	167,032	54,385	400,800	622,218
				6,338,232	6,338,232	1,677,308	543,883	3,840,800	6,338,232
Total						26,737,225	4,229,682	38,407,228	69,374,135

Lands Department
Fees for Excavation Permit System
Cost at 2001-02 Prices

<u>Description of costs</u>	<u>(1)</u>	<u>(2)</u>
	\$	\$
Staff Cost	8,964,166	660,396
Departmental Expenses	260,726	17,773
Accommodation Costs	444,869	27,982
Services by Other Departments	-	-
Central Administrative Overheads	323,706	23,848
Total	<u>9,993,467</u>	<u>729,999</u>
Number of Permits Issued#	4,506	1,817
Unit Cost	2,218	402
Plus Unit Cost for Copying of Land Records	840	-
Total :	<u>3,058</u>	<u>402</u>
Proposed Fees	3060	400

Remarks:

The numbers of permits issued in 2000-01 & 2001-02 are assumed to be the same as that in 1997-98.

Legend :

(1) Excavation permit for excavation in unleased land other than streets maintained by HyD.

(2) Extension of an excavation permit for excavation in unleased land other than streets maintained by HyD

Department : Lands Department

Job Description : Excavation permit for excavation in unleased land other than streets maintained by HyD.

Cost Element : Staff Cost

Grade	Equivalent No. of Staff (A)	Annual Staff Cost Per Ready Reckoner No. 2000/1 (B) \$	Projected Annual staff Cost at 2001-02 Price (C) \$	2001-02 Projected Total Amount (A) X (C) (D) \$	2001-02 Projected Total Amount (D) + Departmental Administrative (E) \$
Senior Executive Officer	0.04	1,152,468	1,187,042	47,482	51,280
Senior Land Executive	0.42	1,094,736	1,127,578	473,583	511,469
Principal Survey Officer	0.05	935,388	963,450	48,172	52,026
Executive Officer I	0.01	722,676	744,356	7,444	8,039
Senior Survey Officer	0.08	676,596	696,894	55,752	60,212
Land Executive	1.65	545,664	562,034	927,356	1,001,543
Land Inspector (I)	4.78	503,784	518,898	2,480,330	2,678,756
Clerical Officer	0.65	466,956	480,965	312,627	337,637
Survey Officer	0.35	362,568	373,445	130,706	141,162
Assistant Clerical Officer	1.78	336,204	346,290	616,396	665,708
Land Inspector (II)	8.08	296,772	305,675	2,469,855	2,667,443
Typist	0.52	251,664	259,214	134,791	145,575
Clerical Assistant	1.96	232,272	239,240	468,911	506,424
Office Assistant	0.29	192,852	198,638	57,605	62,213
Workman II	0.42	159,840	164,635	69,147	74,679
Total :	21.08			8,300,156	8,964,166

	Total Amount 2000-01 \$	2001-02 Projected Total \$	2001-02 Projected Total Amount + Departmental Administrative Overhead \$
Cost Element : Departmental Expenses	252,429	252,429	260,726
Cost Element : Accommodation Costs	336,338	386,789	444,869
Cost Element : Central Administrative Overheads (3.9% of the functional staff cost)	314,278	323,706	-

Department : Lands Department

Job Description : Extension of an excavation permit for excavation in unleased land other than streets maintained by HyD.

Cost Element : Staff Cost

Grade	Equivalent No. of Staff (A)	Annual Staff Cost Per Ready Reckoner No. 2000/1 (B) \$	Projected Annual staff Cost at 2001- 02 Price Level (C) \$	2001-02	2001-02
				Projected Total Amount (A) X (C) (D) \$	Projected Total Amount (D) + Departmental Administrative Overhead (E) \$
Senior Land Executive	0.15	1,094,736	1,127,578	169,137	182,668
Land Executive	0.21	545,664	562,034	118,027	127,469
Clerical Officer	0.15	466,956	480,965	72,145	77,916
Assistant Clerical Officer	0.35	336,204	346,290	121,202	130,898
Typist	0.19	251,664	259,214	49,251	53,191
Clerical Assistant	0.18	232,272	239,240	43,063	46,508
Office Assistant	0.12	192,852	198,638	23,837	25,743
Workman II	0.09	159,840	164,635	14,817	16,003
Total :	1.44			611,478	660,396

	Total Amount 2000-01 \$	2001-02 Projected Total \$	2001-02 Projected Total Amount + Departmental Administrative Overhead \$
Cost Element : Departmental Expenses	17,169	17,169	17,773
Cost Element : Accommodation Costs	20,653	23,751	27,982
Cost Element : Central Administrative Overheads (3.9% of the functional staff cost)	23,153	23,848	-

Department : Lands Department

Job Description : Unit cost for copying of land records

Cost Element : Staff Cost

	Unit Cost at 2000-01 Price Level	Projected Unit Cost at 2001-02 Price Level
	<u>\$</u>	<u>\$</u>
Staff Cost	703	725
- Clerical Officer (90 mins.), Senior Technical Officer (15 mins.) and Technical Officer/ Technical Officer Trainee (90 mins.)		
Departmental Expenses	46	56
Accommodation Costs	32	33
Central Administrative Overheads	24	26
Total :	<u>805</u>	<u>840</u>