

Land (Miscellaneous Provisions) (Amendment) Bill 2002
Consolidated Response to Comments Raised by Utility Undertakers Etc.
Prior to Bills Committee Meeting on 19 September 2002

Abbreviated Organisation Name

HKIP	Hong Kong Institute of Planners	HKIS	Hong Kong Institute of Surveyors
HKCA	Hong Kong Construction Association	NWT	New World Telephone
		HGC	Hutchison Global Crossing
HKCG	Hong Kong and China Gas Company Limited	HKE	Hong Kong Electric Company
YWS	Mr Yeung Wai Sing, District Councilor – Eastern District	GBCA	Hong Kong General Building Contractors Association Ltd.

Item No.	Comment	Utility Undertakers raising the comment	Administration's Response
1.	The legislation is welcomed.	HKIP, HKIS	Thank you.
2.	Worry about enforcement of excavation permit conditions due to the present contracting system.	HKIP	We are confident about the excavation permit system can catch road works promoters and contractors or subcontractors at any tier below.
3.	Should consider use of common utility trench in newly developed areas	HKIP, NWT	A study of the use of common utility trench for the Territory is being carried out by Highways Department.
4.	There is already improvement in road opening works under the existing regime, and the benefit from the proposed system is doubtful.	HKE	Neither government, nor the public is satisfied with the existing regime.
5.	The proposal generates unnecessary administrative works, and cost and time. UU's have to bear the excavation permit fees	HKE	The proposal absorbs the work from the existing system, and any additional administrative work generated is minimal. The hidden cost in running the existing system which is being subsidized by taxpayers is recovered via the proposed EP fees.

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6.	'One stop shop' is the best. Government should take up coordinating different requirements. Government, UU's and contractors should collaborate	HKE, NWT, HGC, GBCA	'One stop shop' is just a term or a concept. HyD is now currently implementing a streamlined approach which can achieve the same effect by collaborating with other Government departments so that approvals are obtained once the permit is issued.
7.	The 'Regulatory Impact Assessment Study' on road openings is still incomplete, the second workshop promised is outstanding. Before the study is complete, the proposal should not be considered.	HKE	The RIA study report was submitted in mid 2000, and was completed. Participants of the first workshop basically rejected government's proposed charging scheme. No specific amendment to the scheme was proposed. Hence, the second workshop was abandoned.
8.	The calculation of economic charges is unsubstantiated. Too high	HKCG, NWT, GBCA	We have explained the calculation of economic charges many times before, we have provided further information in the Bills Committee Information paper for 19-9-2002.
9.	UU's are diverting for others free of charge, hence should not required to pay EP fees	HKCG	The need for a UU to divert its underground apparatus at the request of government is a condition of licence of using the land to bury the apparatus. It does not confer any privilege on the UU concerned. Where the diversion arises not from government, the UU's can recover the cost from the relevant parties.
10.	Determination of initial permit period should be transparent, fair and be flexible. Method should be pre-agreed. There should be a forum	HKCG, NWT	HyD is working together with utility undertakers to devise standardized methods for determining the initial permit period. So far, HyD has agreed with Hongkong Electric Co. on the methods for determining the initial permit period. HyD is continuing discussion with the other utility trades to use similar methods in assessing the initial permit period.
11.	Conditions of permit should be reviewed in light of fee structure to eliminate subjective, ambiguous items	HKCG	Conditions of permit is being reviewed by HyD and UU's will be consulted, but this has nothing to do with the fees.
12.	No clear differentiation between liability between the permittee and nominated permittee	HKCG	HyD will make it clear in future which conditions are to be observed by the permittee, or the nominated permittee, or both at the time when the permit is issued.

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13.	Often it is the contractor runs into problem with existing utilities after opening up, and have to wait for new designs. Contractual requirement may not tie in with the EP requirements. Contractor may have to pay for the EP fees and penalty before they can claim them from the Employer. Uncertain at tenders about number of renewals of EP's required	HKCA	How to make the contractual obligation compatible with the EP conditions and to share the financial or otherwise risk arising from underground utilities is entirely a private matter between the Employer and the Contractor. We believe the industry can come to an agreement. Under the proposal, the design is that EP fees are to be paid by the permittee, who is normally the UU as the Employer, but not the contractor. Of course, they can agree amongst themselves.
14.	Economic charge should be waived for uncontrollable factors - objection from local people or business; - site not handed over by the Authority, including due to consent not granted by police, EPD etc. - adverse weather; - unforeseeable underground conditions.	NWT	We have included such consideration in our proposal. The situations that are technically definable have been written into the Bill.
15.	. Administrative cost should be recovered through tax..	NWT	Not all members of the public have the same pattern of consumption of utility services, and in some cases, they may have a choice. As the use of utility service is a consumption process, we believe it is incorrect to subsidise this process with tax. The user pays principle is more appropriate. It seems that the user pays principle in this case has the support of the Director of Audit and the Public Accounts Committee. Where there is a choice for the consumer, and if this is reflected in the service charge of utility services, it can give the utility undertakers greater incentive to manage their excavation works.
16.	The scheme does not have effect of speeding up work, as promoters and contractors are already keen to complete them early in their own interest. Government is using an easy way out to solve the road opening problem.	NWT	We believe promoters and contractors are keen to complete on time. But the administrative charge part is just for cost recovery, and the economic charge part is the incentive to complete <u>on time</u> . We do not want UU's to get into situation of having to pay economic charge, but we must have the disincentive instrument to meet any eventuality. We believe the scheme can encourage the orderly completion of road opening work on time.

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17.	Fees should not be based on government employees' salary, as they are higher than market rates.	NWT	Salaries of government employee are following market trend
18.	Contravention of EP conditions result in jail and fine to the private sector but not government. Delay in government work is not dealt with. Unless government departments can be made same for criminal and civil liabilities under the charging and penalty scheme, the scheme should not be implemented.	NWT, HGC	Under the scheme, government departments have to pay administrative and economic cost similar to private companies. Government departments are more effectively controlled under a reporting mechanism. Fining government departments is meaningless as the money is also from public coffers.
19.	Not the right economic climate to introduce such to increase the burden of the public. It damages Hong Kong's business environment. The scheme should be stopped. Unnecessary legislation should be avoided	HGC, GBCA	The incentive for prompt completion of street excavations can reduce traffic congestion/ pollution can help improve business environment at large.
20.	If there is a disincentive for delay, there should be a bonus for early completion.	YWS	If there is room for early completion, that means the UU's are not submitting an optimum programme. In the interest of the public, a shortest time program is expected. What we want here is that the program submitted is the physically possible shortest program and we want it to be adhered to. We do not expect early completion.
21.	While government is not to be criminally liable, government officials should be openly reprimanded for delays in completion.	YWS	Government is paying economic charges for delay. Delay in completion is not an offence under the Bill.
22.	It is believed that the implementation of the charging scheme can encourage contractors together to better coordinate works amongst themselves. When there is utilities obstructing the work, the other contractor can borrow the site for a few days to resolve the problem, and any delay should be his account	GBCA	We welcome such a positive attitude. In fact the proposal can cater for multiple contractor working on the same excavation.

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23.	Complicated work should be coordinated, but not to be managed by 'fines'	GBCA	HyD is always coordinating street excavations. When work on different utilities is related to one contract, the contractor should coordinate.
24.	The noise control ordinance is very restrictive on the working hours	GBCA	Under the streamlined process, when the EP is issued, the working hours should have been resolved. If less time is available daily, the working period is correspondingly prolonged, this should not be a problem.
25.	Money collected from for economic charge should be redistributed to those affected rather than to the Treasury. The fee was proposed in year 2000 and should be revised downwards now.	GBCA	The money is collected on behalf of society, but not for Treasury's benefit. It is technically impossible nor necessary to identify individuals affected for refund of the money. The level of economic charges is subject to reviews in future.