

立法會
Legislative Council

LC Paper No. CB(1)1561/01-02
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by the Administration)

Ref : CB1/PL/PLW/1

Legislative Council
Panel on Planning, Lands and Works

Minutes of special meeting
held on Wednesday, 20 February 2002 at 2:30 pm
in the Chamber of the Legislative Council Building

Members present : Dr Hon TANG Siu-tong, JP (Chairman)
Hon LAU Ping-cheung (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LAU Wong-fat, GBS, JP
Hon Albert CHAN Wai-yip
Hon WONG Sing-chi
Hon IP Kwok-him, JP

Member attending : Hon Emily LAU Wai-hing, JP

Members absent : Hon James TO Kun-sun
Hon WONG Yung-kan
Hon Timothy FOK Tsun-ting, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP

Public officers attending : Mr H I KWONG
Principal Assistant Secretary
Works Bureau

Mr H C WONG
Assistant Director
Highways Department

Mr H H LIU
Chief Highway Engineer
Highways Department

Mr Y M CHAN
Chief Engineer
Transport Department

Attendance by invitation : The Hong Kong Construction Association

Mr Billy WONG
President

Mr Patrick CHAN
Secretary General

Mr David WESTWOOD
Member

Hong Kong General Building Contractors Association

Mr CHAN Cheung
President

Mr CHOW Yan-wei
Vice-president

Hutchison Global Crossing Limited

Mr K T WONG
Engineering Director

Mr Y C TANG
General Manager Infrastructure

Mr K K TSANG
Implementation Manager

Hong Kong Tramways Limited

Mr Quinn LAW
Director

Mr Frankie YICK
Assistant Director

Mr Steven CHAN
Engineering Manager

New World Telephone Limited

Mr Kevin KWAN
Assistant General Manager

Mr Tony WONG Kwok-shek
Legal Counsel

Pacific Century CyberWorks Limited

Mr TANG Shiu-wah
General Manager, Outside Plant Services

Mr CHEUNG Kwok-chi
Assistant General Manager, Outside Plant Services

The Hong Kong and China Gas Co. Limited

Mr Simon S H NGO
Network Manager

Mr K W LEE
Network Project Manager

CLP Power Hong Kong Limited

Mr Paul POON
Chief Engineer, Asset Management

Ms Catherine YEUNG
Legal Manager

Hong Kong Cable Television Limited

Mr Allen LAW
General Manager, OSP Engineering and Construction

Ms S K CHAN

Senior External Affairs Manager

The Hong Kong Institute of Architects

Mr Robert LAM
Chairman, Board of Local Affairs

Mr WONG Wah-sang
Hon Secretary

Islands District Council

Ms CHAU Chuen-heung, MH
Vice-Chairman

Sha Tin District Council

Ms LIU Huan-ye
Vice Chairman, Traffic and Transport Committee

Clerk in attendance : Miss Salumi CHAN
Chief Assistant Secretary (1)5

Staff in attendance : Mrs Queenie YU
Senior Assistant Secretary (1)6

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- I. Proposed charging and penalty system for street opening works**
(LC Paper No. CB(1)1061/01-02(01) — Paper provided by the Administration for the special meeting on 20 February 2002
- LC Paper No. CB(1)1090/01-02(01) — “List of queries and concerns raised at the special meeting on 15 January 2002” prepared by the Legislative Council (LegCo) Secretariat
- LC Paper No. CB(1)1090/01-02(02) — Submission from the Hong Kong Institute of Architects
- LC Paper No. CB(1)1090/01-02(03) — Submission from Yuen Long District Council
- LC Paper No. CB(1)1090/01-02(04) — Submission from Central and Western District Council

- LC Paper No. CB(1)755/01-02(05) — Paper provided by the Administration for the special meeting on 15 January 2002
- LC Paper No. CB(1)509/01-02(02) — Paper provided by the Administration for the special meeting on 12 December 2001
- LC Paper No. CB(1)509/01-02(03) — Background brief prepared by the LegCo Secretariat
- LC Paper No. CB(1)369/01-02 — Information provided by the Clerk to the Public Accounts Committee)

The Chairman welcomed representatives of the Administration, utility undertakers, construction industry and District Councils to the special meeting.

2. The Chairman advised that the purpose of the special meeting was to follow up the discussion at the last special meeting on 15 January 2002 on the proposed charging and penalty (C&P) system for road excavation works. He drew Members' attention to the three submissions received since the last special meeting: the submission from the Hong Kong Institute of Architects (HKIA), Yuen Long District Council, and Central and Western District Council.

Briefing by the Administration

3. At the invitation of the Chairman, the Principal Assistant Secretary of Works Bureau (PAS/WB) briefed Members on the paper provided by the Administration (LC Paper No. CB(1)1061/01-02(01)). He advised that at the suggestion of the Panel, the Administration had arranged two meetings on 24 January and 25 January 2002 to further consult the industry and utility undertakers on the proposed C&P system for road excavation works. At the two meetings, the Administration had pointed out that the prime objective of the proposed system was to enable a better control on road excavation works and reduce unnecessary delay in the completion of such works for the overall benefit of the community. While the industry remained concerned about a number of issues, the Administration had made it clear that it was prepared to work closely with the industry to build in the proposed legislative amendments a reasonable and practicable mechanism so as to reduce unnecessary impact on the industry while maintaining a controllable and enforceable framework to ensure road excavation works were properly and expeditiously carried out.

Presentation of views by organizations

4. The Chairman then invited representatives of HKIA and Sha Tin District Council (STDC), who had indicated before the meeting their wish to make oral presentation to the Panel, to speak.

*The Hong Kong Institute of Architects
(LC Paper No. CB(1)1090/01-02(02))*

5. Mr Robert LAM, Chairman of the Board of Local Affairs of HKIA presented the following salient points set out in the submission -

- (a) HKIA in general supported the proposed C&P system. It welcomed the Administration's proposal to examine the feasibility of implementing common utility enclosures, streamlining application procedures and the setting up of an appeal mechanism.
- (b) HKIA strongly urged the Administration to work towards the provision of a set of accurate record plans of underground utility services.
- (c) HKIA considered it important for the Administration to put in place a one-stop-shop mechanism for processing applications for Excavation Permit (EP), i.e. one government department to act as the coordinator and resolve conflicting requirements from various departments.
- (d) For private developments, the Highways Department (HyD) insisted that EP applicants must be the consultant and not the contractor. However, HyD permitted contractor to be the applicant for government projects. HKIA questioned the rationale behind the arrangements and requested the Administration to permit both consultant and contractor to apply for EPs.

Sha Tin District Council

6. Ms LIU Huan-ye, Vice Chairman of the Traffic and Transport Committee of STDC presented the following views -

- (a) As a whole, the proposed C&P system should be useful.
- (b) A mechanism should be put in place to enhance better coordination of road excavation works to be undertaken by different parties and thereby reducing disturbance caused to the community.
- (c) There should be proper control and monitoring against dumping of unwanted works materials left by road excavation works at hillside, streams, etc.

7. Ms Emily LAU Wai-hing noted that the concern of the industry and utility undertakers had not been fully addressed by the Administration. To facilitate

Members' understanding of the latest development, she invited representatives of the industry and utility undertakers to give an account of the outstanding issues.

8. Mr Allen LAW, General Manager, OSP Engineering & Construction of Hong Kong Cable Television Limited (HK Cable TV) presented the following views -

- (a) HK Cable TV appreciated the Administration's efforts in improving the proposed system.
- (b) Criminal sanction for breach of EP conditions was unfair to the industry and would discourage private enterprises from investing in Hong Kong. It was also unfair that criminal sanction would not apply to government departments. HK Cable TV considered that government departments should not be above the law.
- (c) Some controversial issues, such as the definition of "unreasonable delay" and the general conditions of EP, should be thoroughly discussed and agreed with the industry before implementing the proposed C&P system.

9. Mr K K TSANG, Implementation Manager of Hutchison Global Crossing Limited (Hutchison) presented the following views -

- (a) Hutchison considered the proposed criminal sanction unjustified and that it would discourage private enterprises from investing in Hong Kong. Indeed, investment in telecommunication facilities would benefit infrastructural development and the community as a whole.
- (b) At present, 70% of road excavation works were undertaken by government departments. As the proposed C&P system would be enforced by HyD, a government department, it was important for the Administration to put in place a mechanism to ensure that the system would be applied fairly to all parties concerned.
- (c) Hutchison supported the implementation of a one-stop-shop mechanism for application of EPs.
- (d) The proposed charging system aimed to recover the full administrative costs incurred by government departments concerned in issuing and extending EPs and subsequently monitoring the road excavation works. It would incur an additional annual operational cost of \$10 million on Hutchison. As staff cost was the major component of the administrative costs involved and that staff cost in government departments was generally higher than that in the private sector, the Administration should explore options to reduce the staff cost involved in the

processing and monitoring of EPs, thus lowering the level of the proposed fees and charges. One of the options could be engaging non-civil servants to perform the job.

10. Mr Tony WONG Kwok-shek, Legal Counsel of New World Telephone Limited (New World Telephone) presented the following views -

- (a) As delays in the completion of road excavation works were normally beyond the control of the industry, the proposed C&P system would not be effective in addressing the problem. New World Telephone considered that the Administration should not implement the proposed system, but should, in consultation with the industry, work out a feasible and innovative option to improve the operation of government departments concerned to address the problem.
- (b) If the Administration insisted to implement the proposed C&P system, it should address the following issues:
 - (i) To reduce the proposed fees and charges to a reasonable level by devising a charging scheme on the basis of market price, but not of staff cost in government departments;
 - (ii) To provide the basis for calculating the proposed fees and charges, e.g. the additional daily charge of \$18,000 for traffic delay caused to Strategic Roads; and
 - (iii) To consider the impact of the proposed criminal sanction on business development and investment in Hong Kong.

Discussion

Permittee and nominated permittee

11. Referring to the submission of HKIA, Mr LAU Ping-cheung sought clarification from HKIA on its view that both the consultant and the contractor involved in private development projects should be allowed to apply for EPs. Mr Robert LAM, Chairman of the Board of Local Affairs of HKIA explained that HKIA had reservation on imposing legal liability on the consultant who was only responsible for the design of the works. Flexibility should be provided to allow for the change of EP permittee from the consultant to the contractor after the commencement of the works. PAS/WB and the Assistant Director of Highways Department (AD/HyD) recognized that the contractor carrying out the works should be held responsible for breach of EP conditions in relation to the execution of the works. To make the contractor liable to prosecution, a permittee (consultant or utility undertakers) under the proposed system was allowed to name his contractor as a nominated permittee. Both the permittee and nominated permittee would be liable to prosecution against the breach of those EP conditions that should be complied with by them. Mr LAU Ping-cheung expressed concern that the contractor would shift his

responsibility as a nominated permittee to sub-contractors. In response, PAS/WB considered it not possible for a contractor to do so, as there was only one nominated permittee for each case.

Proposed fees and charges

12. Responding to the concern about the level of the proposed fees and charges, PAS/WB said that the proposed charging scheme was in line with the existing practice where all government fees and charges were calculated on the basis of the administrative costs involved in accordance with the “user-pays principle”, and that the staff cost involved would be adjusted following civil service pay adjustment in accordance with the pay trend in the private sector. As regards the proposed additional daily charge for traffic delay caused to Strategic Roads, the Chief Engineer of Transport Department (CE/TD) explained that from each category of roads (i.e. Strategic Roads, Sensitive Roads and Remaining Roads), Transport Department selected representative road sections to conduct a computer study to assess the delay to motorists caused by road excavation works. The computer study was done by utilizing a transport-modeling package. By comparing the total travel time experienced by all vehicles through the road section for the scenarios with and without the excavation works, a delay value was derived. The delay was converted to an economic loss in dollars per day by application of a “value of time” factor used in the Comprehensive Transport Study. To address the queries raised by the industry, Ms Emily LAU requested the Administration to provide more information on the basis for calculating the proposed charges.

13. Mr K T WONG, Engineering Director of Hutchison considered the proposed fee for issue of an EP at \$1,860 unreasonably high. As far as he knew, other application fees charged by government departments were all below \$1,000, for example, application fees for identity card and passport. He reiterated that the proposed charging scheme would impose an additional annual operational cost of \$10 million on Hutchison. He urged the Administration to reduce the proposed fees and charges to a reasonable level, say, about \$60.

14. To facilitate Members’ consideration of whether the proposed fees and charges were reasonable, the Chairman requested the Administration to provide a breakdown of each item of the proposed fees and charges showing its cost components, for example, a breakdown of \$1,860 (proposed fee for issue of an EP), a breakdown of \$18,000 (proposed additional daily charge for traffic delay caused to Strategic Roads).

15. Ms Emily LAU asked whether the Administration would consider the proposal of contracting out the processing and monitoring of EPs for the purpose of cost reduction, thus lowering the level of the fees and charges involved. Mr Billy WONG of the Hong Kong Construction Association (HKCA) expressed his support for the proposal, as the applications for EPs from government departments and private

companies would be processed and monitored by a third party, thereby enhancing the credibility of the proposed C&P system. PAS/WB pointed out that as expertise was required for the processing and monitoring of EPs, it might not be appropriate to contract out the work involved. Nevertheless, the Administration would consider the proposal.

Criminal liability imposed on private sector

16. Responding to the concern about criminal liability, PAS/WB advised that there was general support for applying criminal sanction to road excavation works without valid EPs. As regards breach of EP conditions, the Administration considered that criminal sanction should continue to be applied in the circumstances provided in the existing provisions in the Land (Miscellaneous Provisions) Ordinance (Cap. 28) and the circumstances under which the life and/or property of the public would be endangered. However, for breach of EP conditions involving technical issues, such as failure to display EPs at work sites, the Administration considered it sufficient to impose fines on the permittee/nominated permittee concerned as a deterrent measure.

17. Ir Dr Raymond HO Chung-tai did not consider it justified to impose criminal liability for breach of EP conditions. He requested the Administration to remove the relevant provisions from the legislation. Mr Albert CHAN Wai-yip held different views. He considered criminal sanction essential to achieve effective deterrent effect to tackle the long-standing problems caused by road excavation works, such as the inconvenience caused to road users and pedestrians, and business loss caused to shopowners. The overall interest of the community was of paramount importance.

18. Mr Billy WONG of HKCA agreed that criminal sanction should be applied to road excavation works without valid EPs. As regards breach of EP conditions, the Administration should set out clearly the circumstances under which criminal liability would be imposed on a permittee/nominated permittee. In his view, the proposed C&P system was not an effective means to address the problems caused by road excavation works. The Administration should take a proactive role in considering other long-term measures, such as the adoption of a common trench/duct approach, to address the problems.

19. Mr K K TSANG, Implementation Manager of Hutchison said that his company had reviewed the existing 46 EP conditions and found that a breach of any of them would not endanger the life and property of the public. In response, PAS/WB advised that the Administration was reviewing each of the existing EP conditions and considering the need to include new provisions covering safety conditions. Legal advice was being sought on this issue.

Criminal liability not imposed on government departments

20. Ir Dr Raymond HO, Mr Albert CHAN and Ms Emily LAU considered it unfair that government departments breaching EP conditions would not be prosecuted but would only be subject to a reporting mechanism to the Secretary for Works. Ir Dr HO requested the Administration to provide justifications for this proposal and the details of the "reporting mechanism". Mr CHAN and Ms LAU considered it unacceptable that government departments were above the law and exempted from criminal sanction. They pointed out that if government departments had committed any criminal act or serious offence, they should be prosecuted. Citing the example that government drivers were liable for prosecution under the existing legislation for speeding, Mr CHAN queried why the same principle could not be applied in a situation where government departments were in breach of EP conditions.

21. PAS/WB explained that instead of enforcing EP conditions through the machinery of prosecution, the Administration considered it more appropriate to set up a reporting mechanism for cases involving breach of EP conditions by government departments. Ms Emily LAU did not see any reason for government departments to receive different treatment. PAS/WB advised that the Administration had sought legal advice on the issue. The first point to consider was whether there was a need to impose criminal liability on government departments and the second, whether it was justified to depart from the usual practice where government departments were not liable to criminal prosecution. Ms LAU and Mr Albert CHAN stressed that it was a matter of principle that every person should be equal before the law. They urged the Administration to reconsider the issue. Ms LAU stated that she would not support the legislative proposal if the Administration maintained its original stance.

22. The Chairman requested the Administration to provide the legal advice sought on the issue. PAS/WB undertook to provide the Administration's response after the meeting.

One-stop-shop mechanism

23. Regarding the industry's request for a one-stop-shop mechanism, PAS/WB advised that the government departments concerned would be required to state their requirements clearly to a road works promoter before the issue of an EP to him, and to set their pledge time for processing EP applications. If there were conflicting requirements from different departments, HyD would assist in resolving the matter. Such cases normally involved environmental issues, such as for the purpose of noise control during daytime and at night-time. For example, the industry had once quoted an example where a road works promoter was required by the Environmental Protection Department to suspend works during daytime, and required by the Police to suspend works at night-time. PAS/WB clarified that the requirements on suspension of works would normally be imposed for a short period of time only, but not for the whole day or whole night. In some situations, the road works promoters were actually required to lower the noise level of their works. Nevertheless, PAS/WB assured that

government departments concerned would work closely to avoid any conflicting requirements imposed on a road works promoter.

24. Ir Dr Raymond HO pointed out that it was common for various government departments to impose conflicting requirements. He saw the need to set up a one-stop-shop mechanism under which HyD would be the coordinator for the processing of EP applications. Mr LAU Ping-cheung considered that if HyD was to assume the role of taking enforcement action against the breach of EP conditions, it should act as the said coordinator. Mr Albert CHAN and Ms Emily LAU also considered it essential for the Administration to provide a one-stop-shop mechanism.

Appeal mechanism

25. Regarding the industry's request for a fair appeal mechanism for the determination of the permit period and for other matters, PAS/WB advised that an appeal mechanism would be put in place for the purpose. There would be different levels of appeal. An appellant might present his case to a designated directorate staff of HyD for review. If he was not satisfied with the review result, he might seek a further review within a specified time by the Director of Highways who would be assisted by a review panel comprising at least one independent member from outside HyD. If the appellant was not satisfied with the Director's decision, he might go to the Administrative Appeals Board comprising members all of whom came from outside parties.

26. Ir Dr Raymond HO said that road excavation works involved many complex issues. In view of the large number of road excavation works and the fact that many records of underground utility services were inaccurate, he was concerned that there could be a large number of appeal cases. PAS/WB advised that to reduce the number of unnecessary appeal cases and to facilitate the determination of the permit period, the Administration planned to set up a working group comprising representatives of Government offices and utility operators concerned to set out the initial time required for each item of work involved in road excavation works. The time set would be subject to regular review by the working group. On the other hand, to avoid unnecessary delay in completing road excavation works due to unforeseen underground conditions, the Administration was working closely with utility operators to improve the accuracy of utility records. The Administration also encouraged the industry to conduct investigation work to ascertain the underground conditions for better planning of road excavation works. Ir Dr HO suggested that a government department be designated as the coordinator and mediator to resolve problems encountered by EP permittees before they resorted to the appeal mechanism. He also requested the Administration to provide more information on the different levels of appeal and the proposed composition of the respective Panel/Board handling the appeal, and operation of the appeal mechanism.

27. Referring to the different levels of appeal, Mr Patrick CHAN, Secretary General of HKCA sought clarification on any charges payable by appellants. PAS/WB replied that the Administration did not have any plan to charge appellants for using the appeal mechanism.

Possible role conflict of HyD

28. Ir Dr Raymond HO pointed out that while HyD would be the authority for processing and monitoring EPs, it would also be a permittee, and the authority for taking law enforcement action against the breach of EP conditions. He was concerned that there would be a role conflict among the various roles of HyD. To facilitate Members' consideration of the issue, Mr Albert CHAN requested the Administration to provide a comparison table showing several relevant examples of licences/permits issued by the Administration, with the following information -

- (a) the nature of the licences/permits;
- (b) the authorities responsible for issuing the licences/permits; and
- (c) the authorities responsible for taking enforcement action for breach of the conditions of the licences/permits.

Resource implications

29. At the request of Mr Albert CHAN, PAS/WB undertook to provide an estimate of the additional manpower resources and annual costs required for implementing the proposed C&P system.

Other concerns

30. Responding to Mr Quinn LAW, Director of Hong Kong Tramways Limited (Hong Kong Tramways), PAS/WB said that the Administration was considering the exemption of the tram-only-lanes exclusively used by Hong Kong Tramways from the proposed C&P system. Responding further to Mr LAW, AD/HyD advised that road excavation works for the relocation of tram stations at the request of HyD or Transport Department would not be exempted from the proposed C&P system. PAS/WB said that the same arrangement also applied to other public utility undertakers.

31. Mr CHAN Cheung, President of Hong Kong General Building Contractors Association pointed out that the proposed C&P system would impose hardship on the construction industry. He was aggrieved that no appreciation had been made to the tremendous effort put in by the industry to improve the living environment of Hong Kong in recent decades. Mr Albert CHAN pointed out that Members would support a fair and effective system to tighten control against unreasonable delays of road

excavation works in the interest of the community. The proposal was not meant to target on any particular industry or person.

32. In reply to Ms Emily LAU, AD/HyD pointed out that it was not accurate for the industry to assume that government departments were responsible for 70% of road excavation works while utility undertakers were responsible for the remaining 30%. Under the prevailing system, government departments were not required to obtain EPs. Road excavation works undertaken by government departments were classified as maintenance works, and required the issue of works orders which were not reflected in the statistics on EPs.

Way forward

33. Ir Dr Raymond HO considered that many issues in respect of the proposed C&P system were still unresolved. He suggested the Administration to work out practicable solutions to address the issues before introducing the relevant bill into the Legislative Council (LegCo). Mr Quinn LAW of Hong Kong Tramways agreed with Ir Dr HO. He considered that a grace period should be allowed for implementation after the passage of the bill.

34. Mr Albert CHAN considered that it would be difficult, if not impossible, for all parties concerned to reach a consensus on the proposed C&P system. Nevertheless, it was most important to ensure that the interest of the community at large would be well looked after and that the legislative proposal would achieve the objective to tightening the control over delays in road excavation works.

35. Ms Emily LAU pointed out that the subject had been raised by the Public Accounts Committee in 1990s but was still unsettled. She would accept no further delay and suggested the Panel to conduct another meeting to discuss the outstanding issues.

36. Responding to the Chairman, PAS/WB said that the Administration planned to introduce the relevant bill into LegCo in April 2002. The Administration would provide the information requested by Members and the industry at the meeting in early March 2002.

37. After deliberation and at the request of the industry, Members agreed that another special meeting be scheduled for 8 March 2002 at 8:30 am to follow up the issues raised at this special meeting.

(Post-meeting note: The information provided by the Administration was circulated to Members vide LC Paper No. CB(1)1201/01-02(02) on 4 March 2002.)

II. Any other business

38. There being no other business, the meeting ended at 4:35 pm.

Legislative Council Secretariat

29 April 2002