

**LEGCO PANEL ON PLANNING, LANDS AND WORKS
SPECIAL MEETING ON 15 JANUARY 2002**

Follow-up to meeting on 12 December 2001

Proposed charging and penalty system for street excavation works

In the LegCo Panel on Planning, Lands and Works special meeting on 12 December 2001, the Administration was requested to follow up on certain issues on the captioned subject. The following are the information provided on these issues.

Question (a) Please provide statistics on the operation of the existing permit system to facilitate Members' consideration of whether the proposed system would be effective in preventing unnecessary delays in road excavation works; such statistics should include but not limited to the following –

- (i) the respective number and percentage of Excavation Permits (EPs) issued for excavations affecting carriageways and for excavations not affecting carriageways;**
- (ii) the respective number and percentage of EPs issued to utility undertakers and to government departments;**
- (iii) analyses of the situation of permit extensions based on the classifications of EPs in (i) and (ii) above; such analyses should include the reasons for the extensions.**

Answer (a) The statistics on the operation of the existing excavation permit (EP) system for the fiscal years 1999/2000 and 2000/01 are attached at Appendices 1 and 2.

Appendix 1 shows -

- (i) the respective numbers and percentages of EPs issued for excavation affecting carriageways and non-carriageways;**
- (ii) the respective numbers and percentages of EPs issued to utility undertakers and to works of Government utility undertakings¹;**

¹ Government utility undertakings herein refer to Drainage Services Department and Water Supplies Department.

and,

- (iii) the distribution of extensions of EP's based on (i) and (ii) above.

The reasons for EP extensions are broadly classified into 6 categories and the respective percentages of extensions for each reason is at Appendix 2.

The statistics indicates the following:

1. The percentages of EPs and extensions issued for excavation affecting carriageways and non-carriageways remain almost the same in 1999/2000 and 2000/01. The percentages of EPs granted to private utility undertakings (UUs) and works of Government UUs for works on carriageways and non-carriageways respectively only vary slightly in 1999/2000 and 2000/01.
2. The number of extensions granted in 2000/01 decreased by about 3% compared with that of 1999/2000. This decrease is mostly due to the significant decrease (13%) in the number of extensions for Government UUs' excavation works (private UUs show about 2% increase). This indicates that more works of the Government UUs, were able to complete on time by the initial completion dates in 2000/01 than in 1999/2000.
3. The number of extension days granted in 2000/01 decreased by 24% as compared with 1999/2000. The percentage decrease in number of extension days granted to works of Government UUs is 54% while that of private UUs is 15%.
4. As indicated in (2) and (3) above, there is much room for improvement. With the implementation of the charging scheme, it is believed that there is more incentive for UUs to improve their planning and programming of their works so as to reduce the number of extensions and extension days.
5. Looking at the reasons for extensions, the reasons "Obstruction by underground utilities and difficult ground conditions",

“Interference by other parties” and “Traffic arrangement and co-ordination” have accounted for about 60% of all the extensions. Most of the extensions due to “Obstruction by underground utilities and difficult ground conditions” and “Traffic arrangement and co-ordination” can be avoided if more effort is put into site investigation works and preparation of the temporary traffic management schemes at the planning stage and it is believed that these areas can be most effectively improved by the implementation of the charging scheme. With more works progressing as programmed, the extensions due to “Interference by other parties” can be reduced accordingly.

Question (b) Please provide details of the prosecution actions taken in the past for breach of EP conditions.

Answer (b) In accordance with the records provided by the Judiciary Administrator, there were 30 cases of departmental summons under section 8 of Land (Miscellaneous Provisions) Ordinance between 1998 and 2001.

Police under the Road Traffic (Traffic Control) Regulations can also issue summons in respect of failure to comply with the lighting, signing and guarding requirements specified in the excavation permit. The number of summons issued in 1999/2000 was about 500 and in 2000/01 was about 400.

Question (c) Please provide an analysis of the time required for the submission and processing of applications or EPs vis-a-vis the duration of road excavation works concerned.

Answer (c) Generally, the location and the anticipated duration of road excavation works can affect the lead time for the works to be registered in the Utility Management System (UMS).

The flow diagram of excavation permit processing which reflects the current normal administrative arrangement followed by the Authority and UU’s thereon, in Appendix 3, can well illustrate this point:

Registration

Depending on the category of road on which the works will be carried out and the duration of the works, utility undertakings (UUs) should register their proposed road excavation works in the UMS at a lead time from not less than 1 month to not less than 6 months from the anticipated commencement date. (The lead times are in shown in Appendix 4).

Case Co-ordination

When the proposed road excavation works is registered, Highways Department (HyD) will check for other road excavation works at the proposed location. If it is found that the proposed works is in conflict with other existing/planned road excavation works, the concerned UU is required to co-ordinate the excavation works among their fellow UUs such that all of their works can be scheduled to minimize the number of road excavation works on the same section of a road. The UUs also have to submit an agreed programme to HyD for consideration. If the co-ordination cannot be completed within a prescribed period, HyD will initiate actions to assist the concerned UUs in completing the co-ordination as soon as possible.

Seek Traffic Advice (Preliminary Consent)

The plan of the proposed excavation works will be forwarded to the Transport Department (TD) and the Hong Kong Police Force (HKPF) if it is determined that the proposed works will have considerable traffic impact. This stage will normally take place at not less than 2 weeks before the submission of an EP application. The proposed works will be rejected if any one from Highways Department (HyD), TD or HKPF disagrees with the proposal. UUs will be notified and further processing is not allowed.

The normal processing time for preliminary consent by HyD is 3 working days while for TD and HKPF is 10 working days and 5 working days respectively from the date when they receive the plan from HyD.

EP Application

UU can submit his EP application if he is not required to seek traffic advice from TD and HKPF, or, after the relevant Authorities give

preliminary consents. The maximum advance time for EP applications is 4 months before the anticipated commencement date of the excavation work. The application can normally be processed within 5 working days from the receipt date of the EP application letter.

Therefore, the durations of some stages in the application process are variable according to the nature of the excavation, and some are more or less fixed.

Question (d) Please provide an action plan on the implementation of a one-stop-shop mechanism for receiving and processing applications for EPs;

Answer (d) The one-stop-shop arrangement would require Highways Department to be the clearing house of all application information. Due to resource and cost implications, and possibility of double handling of referrals in one-stop-shop service, the Working Group for one-stop-shop Service for Road Excavation Works has concluded that before considering whether it should go into detailed study of this approach, we should streamline the current EP application process such that utility undertakings can obtain all the consents/requirements from the relevant Government departments *before* the issue of an EP. By this arrangement, UUs can immediately commence their road excavation works when they obtain an EP so that no permit period is wasted. Based on this conclusion, the action plan at Appendix 5 is proposed.

Question (e) What provisions in other ordinances under which a breach of licence/permit conditions carries criminal liability and the sanction of imprisonment, where the licences/permits are issued for the purpose of regulating commercial activities to prevent such activities from causing disturbance and/or nuisances to the public.

Answer (e) The following provisions generally meet the criteria set out in the above question:

Imprisonment/fine provisions

- i) Under Regulation 21 of the ROAD TRAFFIC (PUBLIC SERVICE VEHICLES) REGULATIONS (Cap. 374 sub.leg. D), any person who drives or uses any private car in respect of which a hire car permit is issued in contravention of any condition to which the hire car permit is subject under regulation 14(5) commits an offence and is liable to a fine of \$1000 and to imprisonment for 6 months.
- ii) Under section 8(1) of the WATER POLLUTION CONTROL ORDINANCE (Cap. 358), a person commits an offence who discharges any waste or polluting matter into the waters of Hong Kong in a water control zone, unless as provided in section 12(1)(b) he proves that the discharge in question is made under and in accordance with a licence granted under section 20. Under section 20(4), a licence may be granted subject to conditions. Under section 11(1)(a), a person who commits an offence under section 8(1) is liable to imprisonment for 6 months and a fine of \$200000.
- iii) Under section 9 of the ENVIRONMENTAL IMPACT ASSESSMENT ORDINANCE (Cap. 499), a person shall not construct or operate a designated project without an environmental permit or contrary to the conditions thereof, and under section 26 a person who contravenes section 9 commits an offence and is liable on summary conviction to a fine at level 6 and to imprisonment for 6 months.

Fine only provisions

- iv) Under section 7 of the AIR POLLUTION CONTROL (OPEN BURNING) Regulations (Cap. 311 sub.leg. O), any person who without a permit, carries out open burning for which a permit may be issued, or being a permit holder contravenes any condition to which the permit is subject, commits an offence, and the liability on conviction is a fine at level 5.
- v) Under section 6(2) of the NOISE CONTROL ORDINANCE (Cap. 400), any person who at any designated place between

hours of 7 p.m. and 7 a.m., or at any time on a general holiday, carries out, or causes or permits to be carried out, any prescribed construction work, in respect of which a construction noise permit is not in force or otherwise than in accordance with the conditions of a construction noise permit in force in respect thereof, commits an offence. Under section 6(5), any person who commits an offence under this section shall be liable on conviction to a fine of \$100000.

It is to be noted that under the Section 8 of the existing Land (Miscellaneous Provisions) Ordinance, there is already a provision for fine and imprisonment for any person who makes or maintains a street excavation without or not in accordance with an excavation permit.

Question (f) Please provide an analysis of the regulatory framework in overseas jurisdictions in respect of road excavation works, and to address in particular the concern of whether it is common in overseas jurisdictions that a breach of licence/permit conditions governing the conduct of road excavation works would carry criminal liability and the sanction of imprisonment.

Answer (f) It is common in other jurisdictions that to open up a road requires some permit or licence. But as conditions differ according to jurisdictions or countries, the objective or emphasis of the permits and hence their conditions, which are to cater for local concerns, and the penalties, if any, for contravening such conditions may vary according to the local customs or sentiments to such matters. What is done elsewhere may only serve for reference purpose here.

The follow description is based on the regulatory frameworks for street excavation works in Singapore and the United Kingdom (UK) which are selected as the situation in those countries are close to that of Hong Kong. Both countries require a person carrying out street excavation works to obtain a licence issued by the Authority.

In the Singapore system, there are provisions for fine and imprisonment. The Authority has published two Codes of Practice for street excavation contractors to follow to ensure they carry out their works properly and safely according to the Authority's

requirements and conditions. Under Regulation 32 of the Streets Works (Works on Public Streets) Regulations 1995 (made under the Street Works Act 1995), any person who contravenes Regulation 4 or fails to comply with any condition imposed by the Authority shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$2,000 or to a imprisonment for a term not exceeding 6 months or to both. Apart from this, there is also a Demerit Point System to control the contractors so that unfit contractors will not be allowed to carry out street excavation works. In brief, the Demerit Point System operates as follows:

- (i) an applicant obtains approval for street excavation works for the purposes of utility works;
- (ii) the Authority carries out regular inspections of the utility works carried out by the contractors;
- (iii) if any default is discovered the contractor concerned will be assigned demerit points according to a pre-defined schedule; and
- (iv) if a contractor is assigned more than 200 points within a month, he will be considered “not a fit and proper person” for street opening works.

In the UK system, the New Roads and Street Works Act 1991 governs street excavation works. The requirements such as safety measures, avoidance of unnecessary delay, reinstatement, etc. that an utility undertaking has to comply with during the execution of the street excavation works are included in the Act. Under section 50 of the Act, the breaking up or opening of street requires a street works licence, and under section 51(1), it is an offence for a person to break up or open a street to place or maintain or alter apparatus in the street otherwise than in pursuance of a street works licence, and under section 51(2), a person committing such an offence is liable on summary conviction to a fine not exceeding level 3.

Appendix 1

			1999/2000					2000/2001					
			Government Utility Undertakings*	Private Utility Undertakings	Others#	Total		Government Utility Undertakings	Private Utility Undertakings	Others#	Total		
						No.	%				No.	%	
No. of EPs	Carriageway	No.	2637	3528	860	7025	31%	2710	3955	952	7617	30%	
		%	38%	50%	12%			36%	52%	12%			
	Non-carriageway	No.	1739	12346	1801	15886	69%	1967	13121	2553	17641	70%	
		%	11%	78%	11%			11%	75%	14%			
	Total : carriageway + Non-carriageway	No.	4376	15874	2661	22911			4677	17076	3505	25258	
		%	19%	69%	12%		100%		18%	68%	14%		100%
No. of extensions	Carriageway	No.	3519	3093	500	7112	48%	3000	3422	335	6757	47%	
		%	49%	44%	7%			44%	51%	5%			
	Non-carriageway	No.	1315	5560	698	7573	52%	1209	5429	947	7585	53%	
		%	17%	74%	9%			16%	72%	12%			
	Total : carriageway + Non-carriageway	No.	4834	8653	1198	14685			4209	8851	1282	14342	
		%	33%	59%	8%		100%		29%	62%	9%		100%
No. of extension days	Carriageway	No.	217239	142049	33715	393003	52%	94964	123992	34600	253556	44%	
		%	55%	36%	9%			37%	49%	14%			
	Non-carriageway	No.	70537	244357	48732	363626	48%	38414	204180	78556	321150	56%	
		%	19%	67%	14%			12%	64%	24%			
	Total : carriageway + Non-carriageway	No.	287776	386406	82447	756629			133378	328172	113156	574706	
		%	38%	51%	11%		100%		23%	57%	20%		100%

* Government utility undertakings herein refer to Drainage Services Department and Water Supplies Department

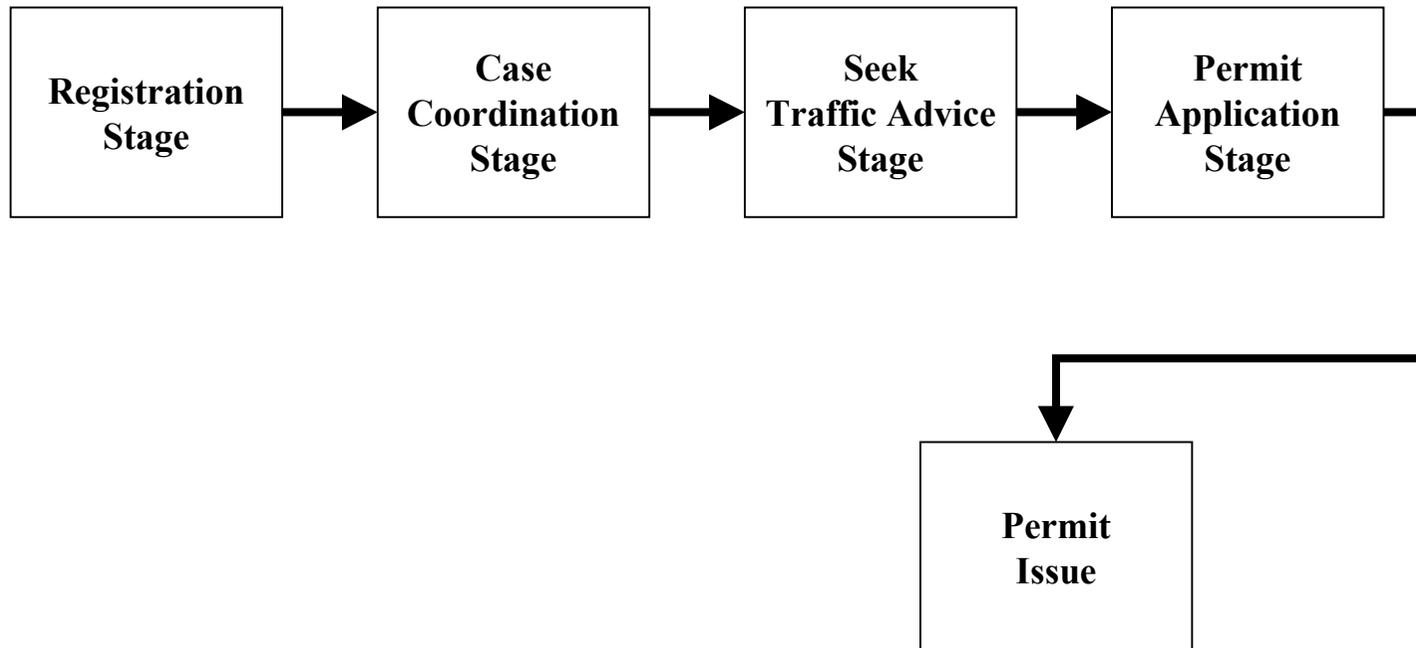
Others include developers, bus companies, KCRC, MTRC etc.

Appendix 2

Reasons for Extensions	1999/2000		2000/01		Remark
	No. of Extensions	%	No. of Extensions	%	
Obstruction by underground utilities and difficulty grounds	2440	17%	2320	16%	can possibly be improved with more investigations beforehand.
Interferred by other parties	4375	30%	4280	30%	can possibly be improved when the progress of others are more satisfactory and with better co-ordination
Traffic arrangement and co-ordination	2310	16%	2884	20%	Inadequacy in traffic arrangement will possibly be improved if facing with economic charge
Inclement weather	923	6%	1262	9%	
Late commencement or completion of work	1997	14%	1968	14%	Can be improved after streamlining of the EP application process such that works can be commenced when an EP is obtained
Others*	2640	18%	1628	11%	Some of the extensions, e.g. due to late delivery/awaiting delivery of materials, can be eliminated with economic charge
Total	14685	100%	14342	100%	

* About 1 to 2 percentage points out of the percentage points in others are due to late/awaiting delivery of materials

Stages of Excavation Permit Processing



Registration Lead Time for Excavation Works

<u>Category of Utility Road Opening Works</u>	<u>Minimum Registration Lead Time</u>
(1) Works on carriageway which will last for more than 3 months, or works on trunk roads or primary distributors.	Not less than 6 months before estimated commencement date.
(2) Carriageway works on district distributors, local distributors or rural roads, which will last for not more than 3 months; or other works which will last for more than 3 months, except those mentioned in (1) above.	Not less than 2 months before estimated commencement date.
(3) All other works.	Not less than 1 month before estimated commencement date.

**Action Plan of a One-stop Shop Mechanism for
Receiving and Processing Applications for EPs**

<u>Action</u>	<u>Date</u>
Submission of proposal of streamlining the current EP application process to the Working Group for One-stop Shop Service for Road Excavation Works.	1/2002
Consultation with UUs on the proposal.	2/2002
Finalization of the proposal	4/2002
Implementation of the streamlined EP application process	6/2002
Review the result of the streamlined EP application process to investigate whether it is necessary to proceed to the one-stop shop service.	10/2002