

7 January 2002

Legislative Council Secretariat
3rd Floor Citibank Tower
3 Garden Road
Central
Hong Kong

By fax (2869 6794) and mail

Attention: Mrs. Queenie Yu

Dear Madam,

**Wharf New T&T's response to the Proposed Charging
and Penalty System for Street Excavation Works under
the Land (Miscellaneous Provisions) Amendment Ordinance**

Introduction

1. Wharf New T&T welcomes the opportunity to provide its submission in relation to the above.
2. Wharf New T&T believes it is the Government's intention under the proposed fee structure to recover administrative costs on a "user-pays" principle and to encourage promoters and contractors to complete their excavation works within the permit period.

The Consultation Paper

3. Wharf New T&T submits that the Government's proposal to impose penalty charges in addition to a fee to recover the administrative costs to ensure that disruptions caused by road excavations were limited to the least possible duration is not an efficient means to achieve the stated objective.
4. Wharf New T&T questions the effectiveness of the application of the "user-pays" principle as an efficient means in recovering Government's cost for administering road-opening activities by utility undertakers. The principle is unfair because the induced cost would eventually be charged back to the end-users, i.e. the utility users as the public at large uses utilities one form or the other. Any increase in cost will in the long-run be passed on to the public with additional overhead required for collection of charges and associated activities. Shifting of such administrative cost together with the cost of extra resources from Government to the utility undertakers and finally to the community was indeed unnecessary and not beneficial to the public at large.
5. A more efficient means to recover costs and to subsidise the subject process is through tax. In fact, the Government does not adopt the "user-pays" principle for services used

by the public at large. A classic example is the cost for building road and footpath which is recovered through tax.

6. Besides, the proposed fee structure does not have any sound effect in encouraging promoters and contractors to speed up the works as promoters and contractors are already themselves keen to complete works. Both promoters and contractors have no further incentive to complete its road opening work under the proposed scheme, as there is little reason for them to delay the projects. For promoters, the earlier the project is completed the faster they can provide services to its customers and the quicker they can generate revenue. For contractors, the earlier they can complete the project, again, the faster they can recover payment from promoters.
7. Wharf New T&T submits that the current system is running very well and should be maintained. The fact that there is an increasing trend in road opening duration is the result of congestion in underground facilities, which makes it more difficult in laying facilities. Our population density has increased significantly but our underground space to accommodate underground facilities has remained unchanged. The administrative work for road opening at carriageways and footpath is essentially different and there should be a separate set of Excavation Permit (“EP”) charges. In fact, road opening on footpath should be encouraged to minimise disruption to traffic.
8. It is unfair to levy a daily fee charged for the whole EP period. At present, when an EP is granted it does not mean the permittee can commence work. The permittee has to obtain consent or approval from other Government Authorities, i.e. Police Department or Environmental Protection Department. The bureaucracy involved has caused administrative delay and this is the reason why utility undertakers have asked time and again for a one-stop-shop excavation approval from the Government so that whenever an EP is granted the permittee can commence work straightaway. Even under the current arrangement, daily fee should only apply to the period from the commencement date indicated in the Advance Notice to the date when Reinstate Notice is issued by the permittee, as this is the actual duration that requires the relevant Government departments to deploy resources for monitoring street excavation.
9. Wharf New T&T maintains that it is only fair to waive all fees associated with EP including EP issue fee, EP extension fee as well as the daily fee in relation to the diversion works and the economic charge for part or whole of the extended period where the cause of delay is beyond the control of the permittee. It is unfair and unacceptable to the utility undertakers to pay EP fees for those diversion works requested by Government departments and other entities such as MTR and KCRC under the prevailing ordinances.

Since the Government proposes to legislate and set out in the relevant ordinance the circumstances for waiving the additional daily charge, we propose the following circumstances and factors to be duly considered by LegCo:

- Authority interference

Work suspended on order of any Public Authority or other Government department in the process of law enforcement and not due to the fault of the Permittee or the Nominated Permittee

- Public interference

Objection of work by people living or doing business in the nearby area or work site obstructed by tenants/shops who had occupied the area for a long period of time.

- Delay by third party

The Authority at the commencement of the EP does not make site available.

Police Advice / Temporary traffic arrangement is not available at the commencement date of EP.

Conflict in schedules and working period among the Government departments such as Environmental Protection Department, Traffic Police and Transport Department.

Work site is occupied by another permittee or Government Departments at the commencement date of the permit.

- Restricted working hours

Conflict in requirement of Authority or other Government departments that lead to less available working hour as compared to what has been prescribed in the Excavation Permit.

- Adverse weather situation

Hoisting of tropical clone warning of signal number 8 or above.

Daily rainfall exceeds 20mm.

- Unforeseeable underground situation

Standard depth is not feasible on site and awaiting application of shallow depth waiver.

Obstruction of existing facilities of other utility undertakers or Government departments and awaiting diversion.

Unfavourable site situation like rocky, sand or unstable site of which longer working time is required.

10. Wharf New T&T supports the proposed EP system for Emergency Excavation as the new arrangement will allow the utility undertakers to make speedy street excavations in order to carry out emergency repair to their network.

11. According to the statistics provided by the Highways Department, the Government departments performed more than 50% of the roadwork and this has already excluded roadwork done by Highways Department which we believe to be enormous. An enforcement team independent from Highways, Water Service and Drainage Services should be set up to maintain fairness and impartiality.

12. There should be a transparent set of criteria for prosecution for breach of EP conditions and these criteria must be objective. Wharf New T&T has serious concerns regarding the criminal liability for breach of EP conditions. It will be extremely unfair if the permittee has to be made liable for the breaches of the nominated permittee or the contractor. The permittee should not be held liable for those EP conditions which are to be complied by the nominated permittee or the contractor. The subject of criminal liability is a serious legal subject and Wharf New T&T urges the LegCo to address the subject with due consideration. The fact that only private sector utility undertakers and road works promoters will be liable to prosecution and Government departments should be exempted is unfair and discriminatory in nature.
13. Wharf New T&T submits that the scheme to recover administrative costs and economic costs for traffic delay is essentially unfair and unnecessary in nature and the Government should spend more efforts on road infrastructure and other utility troughs. In any case, Wharf New T&T would support an unconditional postponement of the entire scheme until 2005 in order to allow the utility undertakers to complete the necessary business and financial planning.

Conclusion

Wharf New T&T submits that the best course of action is to suspend the proposed charging and penalty system for street excavation works. Introduction of the charging and penalty scheme will inevitably increase the cost of utility undertakers significantly and this cost will eventually be passed on to consumer. Without prejudice to whether such scheme should be introduced, under the current economic climate, this will certainly create significant burden to the public and we urge the Government to reconsider whether it is the right time to introduce such a scheme. In fact the scheme runs against the spirit of asking utility undertakers to invest in Hong Kong in order to boost Hong Kong's economy and business environment.

We look forward to participating in LegCo's ongoing Consultation with the industry in relation to the subject. We would welcome the opportunity to further discuss our views with you.

Yours sincerely,

Agnes Tan
Director,
Legal, Regulatory and Carrier Affairs

cc Patrick So (Network)