

## **LegCo Panel on Planning, Lands and Works**

### **Proposed charging and penalty system for road opening works**

#### **List of queries and concerns raised at the special meeting on 15 January 2002**

##### Unpredictable underground conditions

- (1) Given the unpredictable conditions of underground utilities, it would be highly difficult for the Authority to make a reliable assessment of the required works period in processing the applications for excavation permits (EP). Similarly, the permittee and the nominated permittee may encounter substantial difficulties in complying with the approved duration of the EP.
- (2) The unpredictable conditions of underground utilities are attributed to the following factors-
  - (a) utility companies and government departments are not required to provide accurate records of underground utilities;
  - (b) there are no specific rules as to where each underground service should be placed;
  - (c) there are also no specific rules to require utility companies and government departments to co-operate with contractors in identifying their property and in carrying out necessary re-routing of services within a reasonable time-frame when these services cause obstruction to the new works to be undertaken.
- (3) There is a suggestion that promoters of road opening works be required to make trial holes/pits to obtain a better understanding of the underground conditions before digging trenches on the road.

##### Possible conflicts between construction contract terms and EP conditions

- (4) The EP conditions run separately and in parallel with the terms of construction contracts. This may bring conflicts, particularly if the Authority deems delay to be unreasonable and imposes the daily economic charge while the Engineer for the relevant construction contract grants extensions of time.
- (5) It is not clear whether and how the Works Bureau would make the terms of Government's construction contracts reflect the needs of the proposed new system, and if the answer is in the affirmative, whether the Administration would cause non-Government bodies to follow suit.

Equitable treatment for government departments and private utility undertakers

- (6) Some government departments are not required to obtain EP for their road opening works. If the system does not apply to their works, which account for a significant portion of the total road opening works, it is questionable whether the proposed system would be effective in achieving the intended purposes.
- (7) Government departments and private companies should be treated alike under the system. The fact that private utility undertakers and contractors are liable to prosecution while Government departments are exempted from this liability is unfair and discriminatory in nature.

Alternative approaches/measures to address the problems arising from road opening works

- (8) There have been suggestions of building common tunnels/ducts/trenches to house all underground utilities for years. The Administration should actively consider this option for all new development areas to provide a fundamental solution to the problems arising from road opening works.
- (9) The Highways Department or Territory Development Department, when constructing new roads, should place spare cross-road ducts to facilitate future laying or diversion of underground services.
- (10) Unnecessary delays and repetition of road opening works can be avoided through better co-ordination and collaboration among government departments, utility undertakers, and contractors. An effective co-ordination mechanism should be put in place in this regard.
- (11) To provide incentives for compliance with EP conditions, a contractor's compliance with EP conditions in previous road opening works should be included as an assessment criterion under the Government's tendering system.
- (12) The Administration should devise an incentive system, such as a merit-point system to encourage early completion of road opening works.

Queries relating to the design of the proposed system

- (13) It is unclear how the delays caused by factors beyond the control of utility undertakers and contractors would be taken into account in the proposed charging and penalty system.

- (14) The existing EP conditions are not clear and are susceptible to subjective judgement. It is also not clear how the enforcement team/inspectors will assess any breach of EP time conditions. In this regard, it may be useful for the Administration to provide a sample of EP for sight of Members.
- (15) It is not clear what will happen when the permittee (i.e. utility undertaker) and the nominated permittee (i.e. contractor) both infringe the EP conditions.
- (16) The enforcement agency for the system should be independent of the Highways Department (HyD) and other works departments. The current proposal that the enforcement team will be set up in the Highways Department may give rise to conflicts of interest.

#### One-stop-shop mechanism

- (17) According to some deputations, after the Authority has issued an EP, utility undertakers need to obtain further approvals from other departments such as the Transport Department, the Police and the Environmental Protection Department before the excavation works can commence. The Administration has indicated that a streamlined EP application procedures will be in place before the implementation of the proposed system to ensure that utility undertakers can obtain all required consents and approvals from relevant Government departments before the issue of an EP. The Administration has also indicated that it will review the streamlined EP application procedures by end 2002 and the need for a one-stop-shop mechanism for processing applications for EP and other required consents/approvals from Government departments would be considered in the review. However, some deputations and some Members have commented that the one-stop-shop mechanism is a prerequisite for the implementation of the proposed system.

#### Proposed exemptions from the system

- (18) The Hong Kong Tramways Limited proposes that the company be exempted from the system for the tram-only-lanes under its control.
- (19) Some deputations suggest that diversion works performed at the request of the Government, MTR Corporation Limited and Kowloon-Canton Railway Corporation should be exempted from the system.

### Consultation

- (20) Some deputations suggest that utility companies and the construction industry should be further consulted on the details of the proposed system, including the criteria for assessment of initial permit period, economic charges and extension of permit period.

### Detailed cost breakdown

- (21) Some deputations consider that since the charges imposed will be based on the "user-pays" principle, a detailed cost breakdown in respect of all the charges payable under the proposed system should be provided and there should be a proper mechanism for periodic review of the charges.

### Criminal liability

- (22) Some deputations and Members have raised grave concern that private utility undertakers and contractors are subject to criminal liability for breach of EP conditions. They question the necessity of this sanction and consider the sanction too onerous and unfair.

Legislative Council Secretariat

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