

**Information Paper for LegCo Panel on Planning, Lands & Works
Special Meeting on 8 March 2002**

**PROPOSED CHARGING AND PENALTY SYSTEM
FOR STREET EXCAVATION WORKS**

Background

The LegCo Panel on Planning, Lands and Works, at its special meeting on 20 February 2002, requested the Administration to provide further information on the proposed charging and penalty system for street excavation works. They are summarized as follows.

Fees and charges

2. The Excavation Permit (EP) fees are calculated based on a user-pays principle. A breakdown of the major cost components of administering the EP system in relation to first time issue of EPs, issue of extension EPs and monitoring is provided at Annex 1. These major costs are distributed over the number of EPs and extensions issued.

Annex 1

3. The methodology of assessment of economic charge is provided at Annex 2.

Annex 2

Criminal liability for breach of EP conditions

4. There is no question of government departments being above the law. Under the current proposal, the government will be issued excavation permits and charged for fees in the same way as other private sector utility undertakers and road works promoters. The only difference lies in the enforcement arrangements.

5. The imposition of criminal liability on the government or the government department would raise complex questions of procedure and efficacy. There is also no precedent in the Laws of Hong Kong which clearly and unequivocally renders government or government departments liable to criminal prosecution. To enforce statutory requirements through the machinery of prosecution in SAR courts would therefore be departure from our usual practice. Other means exist to ensure that

government departments comply with statutory requirements that apply to them. These include accountability to the LegCo, and monitoring of alleged maladministration by the Ombudsman, the media and NGOs.

6. In view of the above, instead of enforcing the EP conditions via the machinery of prosecution, we consider it more appropriate and effective to set up a reporting procedure in the current proposal. Under the reporting mechanism, the Secretary for Works is notified of the contravention and is required to enquire into the circumstances. If the enquiry shows that a contravention is continuing or likely to recur, he must exercise his statutory function to ensure that the best practicable steps are taken to terminate the contravention or avoid the recurrence.

Appeal mechanism

7. A statutory review mechanism will be introduced in Highways Department to handle reviews on the durations of EP periods and waiver of economic charges:

8. When an application for EP or waiver of economic charge is received, a person at the rank of an Engineer will make an initial assessment on the permit period or the economic charge. He will notify the applicant of the assessment result within a specified time.

9. If the applicant is not satisfied with the assessment result, he may present the case within a specified time to the Chief Highway Engineer (CHE) for review. The CHE will notify the applicant of the assessment result within a specified time and the permit, or notice of waiver, if deemed suitable, will be issued based on CHE's assessment.

10. If the applicant is still not satisfied, he may seek a final review within a specified time by the Director of Highways. Director of Highways will be assisted by a review panel, which will include at least one independent member from outside Highways Department who has no vested interest in the parties concerned. The Director of Highways, as Chairman of the review panel will make his final decision based on the review panel's advice.

11. For cases on the waiver of economic charge, if the applicant is not satisfied with Director of Highways' decision, he may go to the Administrative Appeals Board.

Possible role conflict of Highways Department

12. We do not envisage any role conflict of Highways Department. The team in HyD responsible for enforcement of EP conditions is entirely separated from those responsible for road works. Furthermore, it should be noted that while Highways Department is the issuing authority of Excavation Permits, it is Department of Justice to decide whether a particular case should be prosecuted if there is any contravention of the law or the EP conditions. This is also similar to legislation for application of license to discharge into a water control zone under the Water Pollution Control Ordinance, or, a construction noise permit under the Noise Control Ordinance, where in both cases, the Environmental Protection Department is the licencing authority, the Department of Justice is the prosecuting authority.

13. The sites of Highways Department are open at the roadside and subject to surveillance by the public. Any contravention of the law or permit conditions can be picked up by the industry, media or the public.

Resources and contracting out

14. Besides acquiring additional 9 posts, Highways Department will redeploy its manpower internally and may acquire additional posts for the administration of the whole scheme. As the work involved in administering the scheme leads to law enforcement, it is considered not appropriate to contract out the processing and monitoring of EPs but Highways Department will review the situation after implementation of the scheme.

Works Bureau

March 2002

Highways Department
Proposed Fees for Excavation Permit System
Major Cost Components

	Issue of EP \$	Issue of extension EP \$	Daily Fee in respect of EP/ extension EP \$
Staff Costs	59,383,346	4,628,734	43,037,290
Departmental Expenses	2,352,232	302,143	2,413,409
Accommodation Cost	1,704,949	152,878	1,354,845
Depreciation of the computerised UMS	4,625,073	746,584	5,655,072
Cost of Services provided by other departments	31,040,364	2,575,776	5,928,511
Central Administration Overheads	1,559,846	121,585	1,130,478
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Total Cost	<u>100,665,810</u>	<u>8,527,699</u>	<u>59,519,605</u>
Total no of permit / permit-day	54,295	14,427	1,846,590
Unit cost	1,854	591.1	32.2
Approved fees	1,860	590	32

Note :

- 1) The above costs include those of HyD, TD and HKPF.
- 2) The staff cost is calculated based on the time spent by HyD in executing their duties in relation to excavation works on streets maintained by HyD.
- 3) The costs for issue of EP and extension EP are for processing EP and extension EP applications, and the costs for daily fee are for audit site inspections. They do not include the costs for
- 4) The total no. of permit/permit-day include those for HyD works orders and excavation permits.

Methodology in assessing the Additional EP Daily Charge based on Economic Cost due to Traffic Delay

1. To devise a charging scheme for economic cost, it is essential that we have a classification system of all roads over Hong Kong based on some existing criteria. We identified 3 categories:

Category 1 - Strategic Roads

This category comprises all strategic roads which basically include all red and pink routes.¹ Since expressways are either red or pink routes, they are automatically included in this category.

Category 2 - Sensitive Roads

This category includes all traffic sensitive roads other than those specified in Category 1 above. It includes roads where any excavation would normally require a Traffic Impact Assessment (TIA) and/or Day-time Ban would be imposed, and other roads where the closure of a traffic lane will result in major traffic problems².

Category 3 - Remaining Roads

This category comprises all other roads not included in Category 1 and 2.

2. From each category of roads, Transport Department selected representative road sections and junctions to conduct a computer study to assess the delay to motorists by road excavations.

¹ The existing red routes and pink routes are listed in the Annexes to Highways Department Technical Circular No. 5/2001.

² This list of roads where TIA and/or Day-time Ban requirements shall apply is also given in the Appendix to the "Guidance Notes No. RD/GN/021" issued by Highways Department.

3. The computer study was done utilizing a transport-modeling package capable of reporting the total travel time for all vehicles passing through a defined road section under different network conditions. For each sample selected, a model run was conducted for the normal road network and a second run was carried out with a road network suitably modified to reflect the loss of road capacity, resulting from the excavation works. 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. This delay was converted to an economic loss in dollars per day by application of a “value of time” factor (\$197.6 /car/ hour) used in the Comprehensive Transport Study.